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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2020 - 08

**AN ORDINANCE OF THE VILLAGE COUNCIL
OF THE VILLAGE OF ESTERO, FLORIDA,
PROVIDING FOR THE PROHIBITION OF
ILLICIT DISCHARGES TO STORMWATER
SYSTEMS; PROVIDING FOR PURPOSE;
PROVIDING FOR PENALTY; PROVIDING FOR
CONFLICT; PROVIDING FOR SEVERABILITY;
PROVIDING FOR CODIFICATION; PROVIDING
AN EFFECTIVE DATE.**

WHEREAS, to be in conformance with Federal and State regulations regarding stormwater management, it is necessary to enact a Stormwater Management Ordinance of local application to comply with the Village’s obligations under the National Pollutant Discharge Elimination System; and

WHEREAS, the Village of Estero relies upon the guidance and regulations issued by the Environmental Protection Agency in drafting, adopting, and implementing this Ordinance; and

WHEREAS, the Village of Estero desires to protect the health, safety, and welfare of its citizens and natural resources, including, but not limited to, the quality of life, water quality standards, and control over any discharge of pollutants in the Village of Estero stormwater system.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Estero, Florida, as follows:

Section 1. Recitals.

Each and all of the foregoing recitals are hereby incorporated into this Ordinance as if specifically set forth herein.

Section 2. Purpose.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Village of Estero, Florida through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with

44 requirements of the National Pollutant Discharge Elimination System (NPDES) permit
45 process. The objectives of this ordinance are:

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47 (1) To regulate the contribution of pollutants to the municipal separate storm sewer
48 system (MS4) by stormwater discharges by any user

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50 (2) To prohibit Illicit Connections and Discharges to the municipal separate storm
51 sewer system

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53 (3) To establish legal authority to carry out all inspection, surveillance and
54 monitoring procedures necessary to ensure compliance with this ordinance

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56 **Section 3. Definitions.**

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

59 (a) Authorized Enforcement Agency. The provisions of this Ordinance shall be
60 enforced by designated code inspectors and code enforcement officers of the Village.

61 (b) Best Management Practices (BMPs). Schedules of activities, prohibitions of
62 practices, general good housekeeping practices, pollution prevention and educational
63 practices, maintenance procedures, and other management practices to prevent or reduce the
64 discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater
65 conveyance systems. BMPs also include treatment practices, operating procedures, and
66 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from
67 raw materials storage.

68 (c) Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et
69 seq.), and any subsequent amendments thereto.

70 (d) Construction Activity. Activities subject to NPDES Construction Permits. These
71 include construction projects resulting in land disturbance of 5 acres or more. Such activities
72 include but are not limited to clearing and grubbing, grading, excavating, and demolition.

73 (e) Hazardous Materials. Any material, including any substance, waste, or
74 combination thereof, which because of its quantity, concentration, or physical, chemical, or
75 infectious characteristics may cause, or significantly contribute to, a substantial present or
76 potential hazard to human health, safety, property, or the environment when improperly
77 treated, stored, transported, disposed of, or otherwise managed.

78 (f) Illegal Discharge. Any direct or indirect non-storm water discharge to the storm
79 drain system, except as exempted in Section X of this ordinance.

80 (g) Illicit Connections. An illicit connection is defined as either of the following:

81 (i) Any drain or conveyance, whether on the surface or subsurface,
82 which allows an illegal discharge to enter the storm drain system including but not
83 limited to any conveyances which allow any non-storm water discharge including
84 sewage, process wastewater, and wash water to enter the storm drain system and any
85 connections to the storm drain system from indoor drains and sinks, regardless of
86 whether said drain or connection had been previously allowed, permitted, or approved
87 by an authorized enforcement agency; or,

88 (ii) Any drain or conveyance connected from a commercial or
89 industrial land use to the storm drain system which has not been documented in plans,
90 maps, or equivalent records and approved by an authorized enforcement agency.

91 (h) Industrial Activity. Activities subject to NPDES Industrial Permits as defined in
92 40 CFR, Section 122.26 (b)(14).

93 (i) National Pollutant Discharge Elimination System (NPDES) Storm Water
94 Discharge Permit. A permit issued by EPA (or by a State under authority delegated pursuant
95 to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United
96 States, whether the permit is applicable on an individual, group, or general area-wide basis.

97 (j) Non-Storm Water Discharge. Any discharge to the storm drain system that is not
98 composed entirely of storm water.

99 (k) Person. Any individual, association, organization, partnership, firm, corporation
100 or other entity recognized by law and acting as either the owner or as the owner's agent.

101 (l) Pollutant. Anything which causes or contributes to pollution. Pollutants may
102 include, but are not limited to: paints, varnishes, and solvents; oil and other automotive
103 fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter,
104 or other discarded or abandoned objects, ordinances, and accumulations, so that same may
105 cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous
106 substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate
107 metals; animal wastes; wastes and residues that result from constructing a building or
108 structure; and noxious or offensive matter of any kind.

109 (m) Premises. Any building, lot, parcel of land, or portion of land whether improved
110 or unimproved including adjacent sidewalks and parking strips.

111 (n) Storm Drainage System. Publicly-owned facilities by which storm water is
112 collected and/or conveyed, including but not limited to any roads with drainage systems,
113 municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and
114 detention basins, natural and human-made or altered drainage channels, reservoirs, and other
115 drainage structures.

116 (o) Storm Water. Any surface flow, runoff, and drainage consisting entirely of water
117 from any form of natural precipitation, and resulting from such precipitation.

118 (p) Stormwater Pollution Prevention Plan. A document which describes the Best
119 Management Practices and activities to be implemented by a person or business to identify
120 sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant
121 discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the
122 Maximum Extent Practicable.

123 (q) Wastewater. Any water or other liquid, other than uncontaminated storm water,
124 discharged from a facility.

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Section 4. Applicability.

128 This ordinance shall apply to all water entering the storm drain system generated on any
129 developed and undeveloped lands unless explicitly exempted by an authorized enforcement
130 agency.

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Section 5. Administration and Responsibility.

134 The authorized enforcement agency shall administer, implement, and enforce the
135 provisions of this ordinance. Any powers granted or duties imposed upon the authorized
136 enforcement agency may be delegated in writing by the Director of the authorized
137 enforcement agency to persons or entities acting in the beneficial interest of or in the employ
138 of the agency. The standards set forth herein and promulgated pursuant to this ordinance are
139 minimum standards; therefore, this ordinance does not intend nor imply that compliance by
140 any person will ensure that there will be no contamination, pollution, nor unauthorized
141 discharge of pollutants.

142 **Section 6. Prohibited Acts.**

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1. Prohibition of Illegal Discharges. No person shall discharge or cause to be
discharged into the municipal storm drain system or watercourses any materials, including
but not limited to pollutants or waters containing any pollutants that cause or contribute to a
violation of applicable water quality standards, other than storm water.

148 2. Exceptions. The commencement, conduct or continuance of any illegal
149 discharge to the storm drain system is prohibited except as described in Florida
150 Administrative Code (F.C.A) 62-624.200(2), as follows:

151 a. The following discharges are exempt from discharge prohibitions
152 established by this ordinance:

153 i. Water line flushing;

- 154 ii. Landscape irrigation;
- 155 iii. Diverted stream flows;
- 156 iv. Rising ground waters;
- 157 v. Uncontaminated ground water infiltration (as defined at 40
- 158 C.F.R. 35.2005(20));
- 159 vi. Uncontaminated pumped ground water;
- 160 vii. Discharges from potable water sources;
- 161 viii. Foundation drains;
- 162 ix. Air conditioning condensate;
- 163 x. Irrigation water;
- 164 xi. Springs;
- 165 xii. Water from crawl space pumps;
- 166 xiii. Footing drains;
- 167 xiv. Lawn watering runoff;
- 168 xv. Water from individual residential car washing;
- 169 xvi. Flows from riparian habitats and wetlands;
- 170 xvii. Dechlorinated swimming pool discharges;
- 171 xviii. Residual street wash water; and,
- 172 xix. Discharges or flows from fire fighting activities.

173 b. Discharges specified in writing by the authorized enforcement agency
174 as being necessary to protect public health and safety.

175 c. Dye testing is an allowable discharge, but requires a verbal notification
176 to the authorized enforcement agency prior to the time of the test.

177 d. The prohibition shall not apply to any non-storm water discharge
178 permitted under an NPDES permit, waiver, or waste discharge order issued to the
179 discharger and administered under the authority of the Federal Environmental
180 Protection Agency; *provided that*, the discharger is in full compliance with all
181 requirements of the permit, waiver, or order and other applicable laws and
182 regulations, and provided that written approval has been granted for any discharge to
183 the storm drain system.

184 3. Prohibition of Illicit Connections. The construction, use, maintenance or
185 continued existence of illicit connections to the storm drain system is prohibited. This
186 prohibition expressly includes, without limitation, illicit connections made in the past,
187 regardless of whether the connection was permissible under law or practices applicable or
188 prevailing at the time of connection. A person is considered to be in violation of this
189 ordinance if the person connects a line conveying sewage to the MS4, or allows such a
190 connection to continue.

191 4. Industrial or Construction Activity Discharges. Any person subject to an
192 industrial or construction activity NPDES storm water discharge permit shall comply with all

193 provisions of such permit. Proof of compliance with said permit may be required in a form
194 acceptable to the authorized enforcement agency prior to the allowing of discharges to the
195 MS4.

196 **Section 7. Suspension of MS4 Access.**

197 1. Suspension due to Illicit Discharges in Emergency Situations. The
198 authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a
199 person when such suspension is necessary to stop an actual or threatened discharge which
200 presents or may present imminent and substantial danger to the environment, or to the health
201 or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to
202 comply with a suspension order issued in an emergency, the authorized enforcement agency
203 may take such steps as deemed necessary to prevent or minimize damage to the MS4 or
204 Waters of the United States, or to minimize danger to persons.

205 2. Suspension due to the Detection of Illicit Discharge. Any person discharging
206 to the MS4 in violation of this ordinance may have their MS4 access terminated if such
207 termination would abate or reduce an illicit discharge. The authorized enforcement agency
208 will notify a violator of the proposed termination of its MS4 access. The violator may
209 petition the authorized enforcement agency for a reconsideration and hearing. A person
210 commits an offense if the person reinstates MS4 access to premises terminated pursuant to
211 this Section, without the prior approval of the authorized enforcement agency.

212 **Section 8. Monitoring Discharges.**

213 1. Applicability. This section applies to all facilities that have storm water
214 discharges associated with industrial activity, including construction activity.

215 2. Access to Facilities.

216 a. The authorized enforcement agency shall be permitted to enter and
217 inspect facilities subject to regulation under this ordinance as often as may be
218 necessary to determine compliance with this ordinance. If a discharger has security
219 measures in force which require proper identification and clearance before entry into
220 its premises, the discharger shall make the necessary arrangements to allow access to
221 representatives of the authorized enforcement agency.

222 b. Facility operators shall allow the authorized enforcement agency ready
223 access to all parts of the premises for the purposes of inspection, sampling,
224 examination and copying of records that must be kept under the conditions of an
225 NPDES permit to discharge storm water, and the performance of any additional
226 duties as defined by state and federal law.

227 c. The authorized enforcement agency shall have the right to set up on
228 any permitted facility such devices as are necessary in the opinion of the authorized
229 enforcement agency to conduct monitoring and/or sampling of the facility's storm
230 water discharge.

231 d. The authorized enforcement agency has the right to require the
232 discharger to install monitoring equipment as necessary. The facility's sampling and
233 monitoring equipment shall be maintained at all times in a safe and proper operating
234 condition by the discharger at its own expense. All devices used to measure
235 stormwater flow and quality shall be calibrated to ensure their accuracy.

236 e. Any temporary or permanent obstruction to safe and easy access to the
237 facility to be inspected and/or sampled shall be promptly removed by the operator at
238 the written or oral request of the authorized enforcement agency and shall not be
239 replaced. The costs of clearing such access shall be borne by the operator.

240 f. Unreasonable delays in allowing the authorized enforcement agency
241 access to a permitted facility is a violation of a storm water discharge permit and of
242 this ordinance. A person who is the operator of a facility with a NPDES permit to
243 discharge storm water associated with industrial activity commits an offense if the
244 person denies the authorized enforcement agency reasonable access to the permitted
245 facility for the purpose of conducting any activity authorized or required by this
246 ordinance.

247 g. If the authorized enforcement agency has been refused access to any
248 part of the premises from which stormwater is discharged, and he/she is able to
249 demonstrate probable cause to believe that there may be a violation of this ordinance,
250 or that there is a need to inspect and/or sample as part of a routine inspection and
251 sampling program designed to verify compliance with this ordinance or any order
252 issued hereunder, or to protect the overall public health, safety, and welfare of the
253 community, then the authorized enforcement agency may seek issuance of a search
254 warrant from any court of competent jurisdiction.

255 **Section 9. Requirement to Prevent, Control, and Reduce Storm Water**
256 **Pollutants by the Use of Best Management Practices.**

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258 The authorized enforcement agency will adopt requirements identifying Best
259 Management Practices for any activity, operation, or facility which may cause or contribute
260 to pollution or contamination of storm water, the storm drain system, or waters of the U.S.
261 The owner or operator of a commercial or industrial establishment shall provide, at their own
262 expense, reasonable protection from accidental discharge of prohibited materials or other
263 wastes into the municipal storm drain system or watercourses through the use of these
264 structural and non-structural BMPs. Further, any person responsible for a property or
265 premise, which is, or may be, the source of an illicit discharge, may be required to

266 implement, at said person's expense, additional structural and non-structural BMPs to prevent
267 the further discharge of pollutants to the municipal separate storm sewer system. Compliance
268 with all terms and conditions of a valid NPDES permit authorizing the discharge of storm
269 water associated with industrial activity, to the extent practicable, shall be deemed
270 compliance with the provisions of this section. These BMPs shall be part of a stormwater
271 pollution prevention plan (SWPP) as necessary for compliance with requirements of the
272 NPDES permit.

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274 **Section 10. Watercourse Protection**

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276 Every person owning property through which a watercourse passes, or such person's
277 lessee, shall keep and maintain that part of the watercourse within the property free of trash,
278 debris, excessive vegetation, and other obstacles that would pollute, contaminate, or
279 significantly retard the flow of water through the watercourse. In addition, the owner or
280 lessee shall maintain existing privately owned structures within or adjacent to a watercourse,
281 so that such structures will not become a hazard to the use, function, or physical integrity of
282 the watercourse.

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284 **Section 11. Notification of Spills**

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286 Notwithstanding other requirements of law, as soon as any person responsible for a
287 facility or operation, or responsible for emergency response for a facility or operation has
288 information of any known or suspected release of materials which are resulting or may result
289 in illegal discharges or pollutants discharging into storm water, the storm drain system, or
290 water of the U.S. said person shall take all necessary steps to ensure the discovery,
291 containment, and cleanup of such release. In the event of such a release of hazardous
292 materials said person shall immediately notify emergency response agencies of the
293 occurrence via emergency dispatch services. In the event of a release of non-hazardous
294 materials, said person shall notify the authorized enforcement agency in person or by phone
295 or facsimile no later than the next business day. Notifications in person or by phone shall be
296 confirmed by written notice addressed and mailed to the authorized enforcement agency
297 within three business days of the phone notice. If the discharge of prohibited materials
298 emanates from a commercial or industrial establishment, the owner or operator of such
299 establishment shall also retain an on-site written record of the discharge and the actions taken
300 to prevent its recurrence. Such records shall be retained for at least three years.

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302 **Section 12. Enforcement**

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304 1. Notice of Violation. Whenever the authorized enforcement agency finds that a
305 person has violated a prohibition or failed to meet a requirement of this Ordinance, the
306 authorized enforcement agency may order compliance by written notice of violation to the
307 responsible person. Such notice may require, without limitation:

- 308 a. The performance of monitoring, analyses, and reporting;
- 309 b. The elimination of illicit connections or discharges;
- 310 c. That violating discharges, practices, or operations shall cease and
311 desist;
- 312 d. The abatement or remediation of storm water pollution or
313 contamination hazards and the restoration of any affected property;
- 314 e. Payment of a fine to cover administrative and remediation costs; and
- 315 f. The implementation of source control or treatment BMPs.
- 316 2. If abatement of a violation and/or restoration of affected property is required,
317 the notice shall set forth a deadline within which such remediation or restoration must be
318 completed. Said notice shall further advise that, should the violator fail to remediate or
319 restore within the established deadline, the work will be done by a designated governmental
320 agency or a contractor and the expense thereof shall be charged to the violator.

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322 **Section 20. Remedies Not Exclusive.**

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324 The remedies listed in this ordinance are not exclusive of any other remedies
325 available under any applicable federal, state or local law and it is within the discretion of the
326 authorized enforcement agency to seek cumulative remedies.

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328 **Section 21. Conflict.**

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330 All ordinances, resolutions, official determinations or parts thereof previously
331 adopted or entered by the Village or any of its officials and in conflict with this Ordinance
332 are hereby repealed to the extent inconsistent herewith.

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334 **Section 22. Severability.**

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336 In the event that any portion of this ordinance is for any reason held invalid or
337 unconstitutional by any court of competent jurisdiction, such portion shall be deemed a
338 separate, distinct and independent provision, and such holding shall not affect the validity of
339 the remaining portions of this ordinance.

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341 **Section 23. Codification.**

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343 The Village Council intends that this Ordinance be made part of the Code of the Laws
344 and Ordinances, of the Village of Estero, Florida; and that the sections of this Ordinance can

345 be renumbered or re-lettered to the appropriate word or phrase to accomplish codification,
346 and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered
347 or re-lettered and typographical errors and clarification of ambiguous wording that do not
348 affect the intent can be corrected with the authorization of the Village Manager without the
349 need for a public hearing.

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351 **Section 24. Effective Date.**

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353 This Ordinance shall take effect immediately upon adoption.

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356 [SIGNATURE PAGES FOLLOWS]

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PASSED on first reading this _____ day of _____ 2020.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this _____ day of _____, 2020.

Attest: **VILLAGE OF ESTERO, FLORIDA**

By: _____
Steve Sarkozy, Village Clerk

By: _____
Bill Ribble, Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq., Village Attorney

Vote:	AYE	NAY
Mayor Ribble	_____	_____
Vice Mayor Errington	_____	_____
Councilmember Batos	_____	_____
Councilmember Boesch	_____	_____
Councilmember Levitan	_____	_____
Councilmember McLain	_____	_____
Councilmember Wilson	_____	_____