

ORDINANCE NO. 02

AN ORDINANCE OF THE VILLAGE OF EL PORTAL, FLORIDA, RELATING TO ILLICIT DISCHARGE TO THE STORMWATER SYSTEM, AS PROVIDED HEREIN; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal has found that illicit discharge to the stormwater system results in the damage and loss of natural resources, including the degradation of water quality; and

WHEREAS, the Village of El Portal has found that land disturbing activities accelerate the process of soil erosion and expose sediment to surface stormwater runoff, resulting in the damage and loss of natural resources, including the degradation of water quality; and

WHEREAS, sedimentation, which is the process by which sediment resulting from accelerated erosion is transported off the site of the land-disturbing activity, introduces excess nutrients, suffocates sea grass, blocks sunlight, inhibits photosynthesis, and depletes oxygen levels in the Bay; and

WHEREAS, the discharge of pollutants directly or via stormwater runoff into Biscayne Bay and surrounding water bodies degrades water quality and poses a public health risk; and

WHEREAS, the Village of El Portal often finds that storm drains are not properly protected or maintained, allowing an accumulation of pollutants to enter the stormwater system and discharge into Biscayne Bay and its interconnected waterways; and

WHEREAS, on December 10, 2020, Miami-Dade County released a Report on Development and Implementation of an Annual Report Card Program on the Health of Biscayne Bay stating that the health of the Bay is largely driven by water quality; and

WHEREAS, as an operator of Municipal Separate Storm Sewer Systems ("MS4") and a permittee of National Pollution Discharge Elimination System (NPDES) Permit No. FLS000003, the Village of El Portal must prohibit illicit discharges, illicit connections, improper disposal and illegal dumping into the stormwater system, and sediment and erosion reducing best management practices; and

WHEREAS, The Village Council desires to update the Village Code to make certain changes, as set forth herein, to said regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE OF EL PORTAL, FLORIDA COUNCIL, that:

Section 1. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. A new section of the Village Code relating to illicit stormwater discharges and connections is hereby adopted in accordance with the attached Exhibit A.

Section 3. Severability: It is intended by the Village that if any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional, invalid, or ineffective by a court of competent jurisdiction, the same shall not affect the validity of any remaining portions of this ordinance.

Section 4. Repeal of Ordinances in Conflict. That all sections or parts of sections of the Code of Ordinances, Village of El Portal, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 5. Codification That it is the intention of the Village Council of The Village of El Portal Florida, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of The Village of El Portal Florida's Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.


Section 6. Effective Date. This ordinance will take effect 30 days after adoption at Second Reading.

APPROVED AT FIRST READING AND PUBLIC HEARING THE 25 DAY OF April 2023.

ADOPTED AT SECOND READING AN PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE VILLAGE COUNCIL OF EL PORTAL, FLORIDA THE 23 DAY OF May 2023.



Omarr C. Nickerson, Mayor
Village of El Portal

ATTEST: 
Yenise Jacobi CMC, Village Clerk

Approved as to form and legal sufficiency:
Greenspoon Marder LLP
Village Attorneys

By: Joseph S. Geller
Joseph S. Geller, Esq.

Vote: mut: Urbom

Councilperson Lightfoot-Ward:
Councilperson Martin:
Vice Mayor Pirela:
Councilperson Urbom:
Mayor Nickerson:

2nd: Pirela
 (Yes) (No)
 (Yes) (No)
 (Yes) (No)
 (Yes) (No)
 (Yes) (No)

I, Yenise Jacobi, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Ordinance No.: 2023-02 adopted on this 23 day May, 2023, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this 23 day of May, 2023.

Yenise Jacobi
Yenise Jacobi, Village Clerk

EXHIBIT A

ARTICLE __ - ILLICIT STORMWATER DISCHARGES AND CONNECTIONS.

Sec. XX-400. - Purpose and intent.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Village through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The intent of this article is:

- (a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (b) To prohibit illicit connections and discharges to the municipal separate storm sewer system; and
- (c) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this article.

Sec. XX-401. - MS4 definitions uniquely applicable to this article.

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

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and any subsequent amendments thereto.

Construction Activity means activities subject to NPDES Construction Permits. Permits are required for construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

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

Illicit Discharge means any direct or indirect non-stormwater discharge (spilling, leaking, seeping, pouring, pumping, emitting, emptying, or dumping) to the storm drain system or waterbody, except as exempted in §XX-406.

Illicit Connections means either of the following: any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and

wash water to enter the storm drain system and any connections to the drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Village or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the Village.

Impaired Waters are defined pursuant to § 62-40.210, F.A.C. as it may be amended from time to time, which means a waterbody or waterbody segment that does not meet one or more of its designated uses due in whole or in part to discharges of pollutants, and has been listed as impaired by order of the Secretary in accordance with the procedures set forth in § 62-303, F.A.C.

Industrial Activity are defined as businesses engaged in industrial production or service, that is, businesses characterized by manufacturing or productive enterprise or a related service business and is subject to NPDES Industrial Permits as defined in 40 CFR, § 122.26(b)(14).

Municipal Separate Storm Sewer System or MS4 is defined as a publicly owned stormwater management system that consists of conveyances including roads with drainage systems, detention ponds, retention ponds, catch basins, curbs, gutters, ditches, man-made channels, swales, or storm drains designed or used for collecting, storing, treating, or conveying stormwater.

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

Nonpoint Source Pollution means pollution from any source other than from any discernible, confined, and discrete conveyances, and may include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal, and urban runoff sources such as fertilizer.

Non-Stormwater Discharge means discharge to the storm drain system that is not composed entirely of stormwater.

Person means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

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

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Storm Drainage System means publicly owned facilities by which stormwater is collected or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets,

piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, swales, and other drainage structures.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Stormwater Management System or SMS means either or both of the public or privately owned systems of conveyances including roads with drainage systems, detention ponds, retention ponds, catch basins, curbs, gutters, ditches, man-made channels, swales, or storm drains designed or used for collecting, storing, treating, or conveying stormwater.

Stormwater Pollution Prevention Plan (SWPPP) means a document that describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, or receiving waters to the maximum extent practicable.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse means a natural or artificial channel, ditch, canal, swale, or other drainage structure made for the conveyance of water.

Sec. XX-402. - Applicability.

This article applies to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Village.

Sec. XX-403. - Responsibility for administration.

The Village will administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the Village may be delegated by the Village Manager to appropriate Village departments and personnel.

Sec. XX-404. - Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances will be held invalid, such invalidity will not affect the other provisions or application of this article.

Sec. XX-405. - Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore, this article does not imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants and additional measures may be required to maintain compliance with all provisions of this chapter or other state and federal laws and regulations.

Sec. XX-406. - Prohibitions of illegal discharges.

No person may discharge or cause to be discharged into the municipal storm drain system or waterbodies any materials other than stormwater, including but not limited to pollutants or waters containing any

pollutants that cause or contribute to a violation of applicable water quality standards or a violation of the Municipal Stormwater Permit, or conveys significant quantities of pollutants to surface waters, or is a danger to public health or safety. The commencement, conduct, or continuance of any illegal discharge to the storm drain system or waterbody is prohibited and will be considered irreparable harm.

Exemptions.

- (a) The following discharges are exempt from discharge prohibitions established by this article;
- (1) Water line flushing or other potable water sources;
 - (2) Landscape irrigation or lawn watering if using potable water;
 - (3) Diverted stream flows;
 - (4) Rising groundwaters or springs;
 - (5) Groundwater infiltration to storm drains;
 - (6) Uncontaminated pumped groundwater;
 - (7) Foundation or footing drains (not including active groundwater dewatering systems);
 - (8) Crawl space pumps;
 - (9) Air conditioning condensate;
 - (10) Non-commercial washing of vehicles or boats using non-toxic, non-hazardous, biodegradable, phosphate free cleaners, if runoff is directed to an onsite stormwater management system or to a pervious surface;
 - (11) Natural riparian habitat or wetland flows;
 - (12) Neutralized swimming pool discharge if directed to pervious greenspace and is free of pollutants; and
 - (13) Fire-fighting activities.
- (b) Discharges or connections permitted by the Village, provided that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations.
- (c) Dye testing is an allowable discharge but requires a verbal notification to the Village Manager prior to the time of the test.
- (d) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit waiver, or order, and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (e) Herbicide application by a licensed applicator in a manner compliant with state law. Best Management Practices (BMPs), and label instructions.

(f) The wash down of a motor vehicle accident scene and other type of emergency response. However, the wastes from the wash down must be disposed of properly by the person responsible for site rehabilitation.

(g) Permitted municipal treated wastewater or reclaimed water discharge.

(h) Larvicide application by the Miami-Dade County Mosquito Control Inspectors for the protection of public health and safety against waterborne illnesses.

Prohibition of Illicit Connections.

(a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.

Sec. XX-407. - Suspension of MS4 access.

Suspension due to Illicit Discharges in Emergency Situations. The Village may, without prior notice, suspend MS4 discharge access to a person 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 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Village manager may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Village Manager will notify a violator of the proposed termination of its MS4 access. The violator may petition the Village for a reconsideration.

If any person fails to remove an illicit connection upon notification by the Village Manager, or upon revocation of a connection permit, the Village Manager may remove such connection from the storm drain system pursuant to § XX-415. The Village Manager may pursue the recovery of costs for such removal pursuant to § XX-415.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Village Manager.

Sec. XX-408. - Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit must comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Village prior to the allowing of discharges to the MS4.

Sec. XX-409. - Monitoring of discharges.

(a) Applicability. This section applies to all facilities that have stormwater discharges associated with Industrial, commercial, residential, or construction activity and will become effective if permit requirements are not being met or reasonable BMPs are not being implemented.

(b) Access to Facilities.

(1) The Village must be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger must make the necessary arrangements to allow access to the Village.

(2) Facility operators must allow the Village ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records, that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3) The Village will have the right to set up on any permitted facility such devices as are necessary in the opinion of the Village manager to conduct monitoring and sampling of the facility's stormwater discharge.

(4) The Village has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment will be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality must be calibrated to ensure their accuracy and monitoring results must be shared with the Village.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled must be promptly removed by the operator at the written or oral request of the Village and must not be replaced. The costs of clearing such access will be borne by the operator.

(6) Unreasonable delays in allowing the Village access to a permitted facility is a violation of a stormwater discharge permit and of this article. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Village reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

(1) If the Village has been refused access to any part of the premises from which stormwater is discharged, and the Village is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Village Manager may seek issuance of a search warrant from any court of competent jurisdiction.

(8) If a Private Stormwater Management System (SMS) discharges via the MS4 to a waterbody that is declared impaired by FDEP, or is upstream of an impaired waterbody, or the downstream waterbody has an adopted Total Maximum Daily Load, Basin Management Action Plan, or Site

Specific Alternative Criteria , the discharger may be required to monitor the water at the relevant outfall at the Village's discretion to determine if the discharger is meeting the established criteria and not causing any further impairment. Further, the discharger may be required to reduce the pollutant load being discharged from the private SMS to the MS4 to the greatest extent possible.

Sec. XX-410. - Best management practices to prevent, control, and reduce stormwater pollution.

The Village will identify and implement Best Management Practices for activities that may cause or contribute to pollution or contamination of stormwater, the storm drain system , or waters of the U.S. The owner or operator of a commercial or industrial establishment will provide , at their own expense , reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise , which is, or may be, the source of an illicit discharge, may be required to implement at said person's expense , additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, may be deemed compliant with the provisions of this section. These BMPs will be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Sec. XX-411 . - Watercourse protection.

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

Sec. XX-412. - Spill notification.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation , or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system , or waters of the U.S. , said person must take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person must immediately notify emergency response agencies of the occurrence via emergency dispatch services and the Village's Code Enforcement Department. In the event of a release of non-hazardous materials, said person must notify the Village Manager no later than the day of occurrence. Notifications in person or by phone must be confirmed by written notice either by mail or email to the Village within one business day . Follow up actions taken to remediate the spill must be included in the notification. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment must also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records must be retained for at least three years.

Sec. XX-413. - Enforcement.

Notice of Violation. Whenever the Village finds that a person has violated a prohibition or failed to meet a requirement of this article, the Village Manager may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations must cease and desist;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

If abatement of a violation or restoration of affected property is required, the notice will set forth a deadline within which such remediation or restoration must be completed. Said notice will further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof will be charged to the violator. Violations under this article may be enforced under the code enforcement provisions of Chapter 2. Article V - Code Enforcement.

Sec. XX-414. - Emergency cleanup or abatement.

In order to enforce the provisions of this chapter, when the Village Manager finds and determines that the severity of the violation warrants immediate action to protect public health and safety, or the environment, he/she may clean up or abate violation thereof if the violator does not take immediate action. The cost of such cleanup or abatement is addressed in § XX-415 of this article. Such emergency cleanup or abatement will not relieve the person of further action, which may be taken by the Village manager, including but not limited to . suspension, revocation, or modification of the discharger's permit, recovery of costs, damages and liability arising from any violations of this chapter , or any other applicable provisions of State or Federal laws, or local ordinances.

Sec. XX-415. - Violation abatement costs.

Within 30 days after abatement of the violation , the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 30 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges will become a special assessment against the property and will constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article will become liable to the Village by reason of such violation.

Sec. XX-416. - Injunctive relief.

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the Village Manager may petition for a preliminary or permanent injunction restraining the person from activities

that would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. XX-417. - Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Sec. XX-418. - Penalties.

Violation of this Chapter may be enforced by the Village pursuant to Village of El Portal Code Chapter 2, Article V (Code Enforcement) and Chapter 162, Parts I and II, Florida Statutes (2021), including Florida Statutes Section 162.22. (Change to El Portal references)

Sec. XX-419. - Remedies not exclusive.

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