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# COMMUNITY WASTEWATER UTILITY SYSTEMS

MARION TOWNSHIP, MICHIGAN  
Ordinance No. 07-01

## SECTION I - GENERAL

### Section 1.1 – Intent and Purpose.

The majority of the land area of Marion Township relies on individual on-site wastewater disposal systems. Although the Township provides public wastewater disposal within designated sewer service areas, it is unlikely that the land area served by the public sewer system will be expanded in any significant manner, if at all, in the foreseeable future. Pursuant to Act No. 451 of the Public Acts of 1994, as amended, the Michigan Department of Environmental Quality ("MDEQ") is authorized to issue permits for on-site sewage disposal systems that service more than one property (referred to herein as a "community wastewater utility system"). The Township recognizes that a community wastewater utility system may be in the best interests of the health, safety, and welfare of the Township and the residents in some limited circumstances. The Township is concerned that should the operation of a community wastewater utility system fail or otherwise not properly function, the extension of public sewers to replace the problem system may be impractical, perhaps nearly impossible, depending upon the location of a development with a failed system in relation to designated municipally owned sanitary sewer systems.

Therefore, the Township requires assurance that, any community wastewater utility system will be designed, constructed, operated, maintained, repaired and/or replaced in a manner that best serves and protects the health, safety, and welfare of the Township and its residents. Furthermore, the Township requires that it shall be indemnified from any costs or liability in connection with the design, construction, operation, maintenance, repair and/or replacement of that system. To this effect, this division is intended to regulate community wastewater utility systems to provide those assurances.

This Ordinance is enacted under the authority of the Township's general police powers to protect the health, safety, and welfare of its residents and under the authority of Act No. 451 of the Public Acts of 1994, as amended.

## SECTION II - DEFINITIONS

### Section 2.1 – Definitions

- A. **ACT 451** means Act. No. **451** of the Michigan Public Acts of **1994**, as amended.

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- B. **ASSOCIATION**, for a condominium development, shall have the same meaning as “association of co-owners” found in Act No. 59 of the Michigan Public Acts of 1978, as amended. For a subdivision or other development, it shall mean an association of homeowners or property owners organized pursuant to deed restrictions and/or restrictive covenants in a particular development.
  - C. **Community Wastewater Utility System**. A facility which is owned by a non-governmental entity and is designed, constructed, operated, and maintained to transport, collect, process, and treat residential sanitary sewage from more than one (1) dwelling unit. The system shall include any individual septic tanks, pumps, lines, and appurtenances serving each dwelling unit in addition to facilities, sewers, and appurtenances that serve more than one (1) dwelling unit.
  - D. **DEVELOPMENT** shall include a subdivision as defined by Act No. 288 of the Public Acts of 1967, as amended, a condominium pursuant to the provisions of Act No. 59 of the Public Acts of 1978, as amended, or any group of dwellings or structures which are proposed to be serviced by a community wastewater utility system.
  - E. **DEVELOPMENT DOCUMENTS** means (a) for a condominium project, the master deed and bylaws provided by Act No. 59 of the Public Acts of 1978, as amended; and (b) with regard to subdivisions or other developments, deed restrictions and/or restrictive covenants.
  - F. **EXPANSION** shall mean any activity whereby additional structures are added or the number of users increases beyond what was authorized by the Special Use Permit.
  - G. **PUBLIC SANITARY SEWER SYSTEM** means a publicly-owned sanitary sewer system.
  - H. **MDEQ** means the Michigan Department of Environmental Quality, or its successors.
  - I. **OWNER** shall mean the owner of a fee simple interest, a land contract purchaser, or owner of a unit in a condominium, of property that is serviced or is proposed to be serviced by a community wastewater utility system.
  - J. **TOWNSHIP** means the Marion Township Livingston County, Michigan, acting through its fully elected Township Board.

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## **SECTION III – REGULATIONS**

### **Section 3.1 – Regulations**

- A. Except as provided in this Ordinance, it shall be unlawful to construct, install, or operate a community wastewater utility system within the Township.
- B. Community wastewater utility systems shall require a special use permit from the Township Board in accordance with the procedures and standards set forth in Article 17 and Section 17.31 of the Zoning Ordinance.
- C. The Township shall grant approval of a community wastewater utility system only after a special use permit has been or approved and the Board determines that the applicant has met all the standards contained in this Ordinance.

### **Section 3.2 – Requirements for approval**

- A. Any community wastewater utility system shall comply with the terms of this Ordinance, applicable standards of the State of Michigan and/or Livingston County and any other applicable laws and regulations of the federal government, State of Michigan, Livingston County, and the Township.
- B. No new community wastewater utility system or an expansion of an existing system shall be constructed, installed, or operated within the Township unless the plans for the installation and system design have been approved by the Township, Livingston County and/or the State of Michigan (whichever has jurisdiction) as conforming with their regulations and a permit issued in accordance therewith.
- C. The applicant shall provide the following to the Township before approval for a community wastewater utility system may be granted:
  - 1. A certification from the system design engineer indicating that the system as designed and constructed will adequately process wastewater as required by applicable laws and regulations of the State of Michigan and/or Livingston County and the Township. The Township engineer shall review and make a recommendation regarding the adequacy of such certification.
  - 2. An executed agreement between the applicant, owner and/or association, and the applicable Department of Livingston County or another properly certified operator possessing the required ability to

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operate and manage the system. The agreement shall contain provisions for: (i) operation, maintenance, repair, and replacement of the system; (ii) collection of charges for connection to, and use, operation, maintenance, repair, and replacement of the system. (iii) compliance with all applicable governmental laws, ordinances, regulations, and agreements regarding the system. The agreement shall provide that it may not be terminated without Township approval. The Township attorney and Township engineer shall review and make a recommendation regarding the adequacy of such an agreement.

3. An executed agreement between the applicant, owner and/or association, and the Township in a form acceptable to the Township. The agreement shall specify:
  - a. The applicant, owner, and/or association who shall be responsible for operation, maintenance, repair and replacement of the system.
  - b. The individual or entity responsible for such operation, maintenance, repair and replacement on behalf of the applicant, owner, and/or association.
  - c. Standards for inspection, monitoring operation, maintenance, repair and/or replacement of the system in accordance with the guidelines of the system manufacturer and the certified operator and the requirement of the State of Michigan and/or Livingston County.
  - d. Indemnification of the Township, including a duty to defend by the applicant, owner, and/or association, jointly and severally, from any and all costs and liability incurred by the Township with respect to operation, maintenance, repair and replacement of the system.
  - e. A statement acknowledging that the applicant, owner and/or association shall provide a policy of comprehensive general liability insurance with limits acceptable to the Township, naming the Township as an additional insured.
  - f. A statement acknowledging that the Township may, at its sole discretion, require that the community sewer system be abandoned and all properties in the development be connected to any publicly-owned community sewer system which may be constructed in the future abutting the development or in an easement abutting the development.

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- g. A statement acknowledging that the Township shall have the option to purchase for the sum of \$1.00 (1) marketable title to any lands required to be titled in the name of the Township by governmental or regulatory requirements, or (2) easements reasonably deemed by the Township to be necessary in conjunction with the Township's assumption of responsibility for the community sewer system or future publicly-owner community sewer system.
                  - h. A statement acknowledging the special assessment district to be established as described below.
- 4. The provisions of the development documentation referenced in this section shall also be included in a separate document, in form approved by the Township attorney, and included within the condominium disclosure documents for a condominium project, or in a separate recordable document for other developments, and delivered to the prospective purchaser prior to the execution of a purchase agreement for property proposed to be serviced by a community wastewater utility system.
  - 5. A permanent and irrevocable easement, in recordable form, shall be granted by the applicant, owner and/or association to the Township and its employees, agents, and assigns authorizing them to enter on the property upon which the system is located for the purpose of inspections. The property on which the system is located shall be maintained so it is accessible at all times, prohibiting any structures or landscaping within such area that would unreasonably interfere with such access.
- D. No land use permit shall be used for any structure or development proposed to be serviced by a community sewer system until the Township has approved such system in accordance with terms and provision of this Ordinance.
  - E. Anything in this Ordinance to contrary notwithstanding, the Township shall not be responsible or obligated to perform any needed or desired repairs, maintenance, improvement, and/or replacement of the system or any portion thereof.
  - F. The contractor and/or association shall furnish periodic operating reports in accordance with the maintenance requirements and schedule. Any such requirements shall be made a part of the development documents.

- G. The development documents referenced in section C. 4 and 5 shall be recorded at the office of the Livingston County Register of Deeds. After approval by the Township the development documents, as they pertain to the system, shall not be changed without Township approval. The documents shall contain language to that effect.
- H. Prior to recording the development documents and sale of any unit, lot or parcel served by a community wastewater utility system, applicant and owner shall establish a special assessment district for the development, the purpose of which shall be to provide for assessment of the units, lots or parcels in each development by the Township for the costs of inspection, monitoring, maintenance, repair, operation or replacement of the community wastewater utility system in the event the association shall fail to properly perform such work or in the event the Township takes control of the community wastewater utility system.
- I. The association, individual owners and/or users of the system shall be jointly and severally responsible for all costs involved in the installation, operation, maintenance, repair, replacement and liability associated with the system. The Township may, at its option, elect to collect all costs it may incur in connection with the system pursuant to the other provisions of this division, or by direct court action against the association, owners, and/or users of the system.

## **SECTION IV – FEES, PENALTIES AND ENFORCEMENT**

### **Section 4.1 – Fees**

Applications for community wastewater utility systems approval under this Ordinance shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the Marion Township Board. In addition, an applicant shall pay an additional escrow fee in an amount determined by resolution of the Marion Township Board for the estimated cost of outside consultant(s) who may be retained by the Township in connection with the review of the application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the applicant shall be refunded the balance. In the event the cost of the services of the consultant(s) exceeds the amount of the escrow fee, the applicant shall pay the deficiency to the Township prior to the issuance of a special use permit. A denial of an application for a special use permit shall not affect the applicant's obligation to pay the escrow fee provided for in this Section.

### **Section 4.2 – Penalties and Enforcement**

- A. Enforcement. The Enforcement Officer or his/her agent, officer or employee shall have authority under this Ordinance to enter upon privately-owned land for the purpose of performing the Township's duties

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under this ordinance and may take or cause to be made such examinations, surveys or samplings as are deemed necessary.

- B. Civil remedies. The provisions of this division shall be enforceable through any and all remedies at law or in equity in any court of competent jurisdiction. Any violation of this division is deemed to be nuisance per se.
1. Penalties. In addition to the rights and remedies herein provided to the Township, any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00), or be imprisoned in the county jail for a period not exceeding ninety (90) days, or be both so fined and imprisoned. Each day such violation is continued or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
  2. Injunction. Any activity conducted in violation of this Section is declared to be a nuisance per se, and the Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the property as nearly as possible to its condition before the violation.
  3. Stop-Work Order. The Township may also issue a stop-work order or withhold issuance of a Certificate of Zoning Compliance, Land Use Permits or inspection until the provisions of this Ordinance, including any conditions attached to a Special Use Permit, have been fully met. Failure to obey a stop-work order shall constitute a violation of this Ordinance.

## **SECTION V – ORDINANCE CONFLICT**

Nothing in this Ordinance shall be interpreted to conflict with present or future state statutes in the same subject matter; conflicting provisions of this Ordinance shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this Ordinance shall be construed, if possible, to be consistent with relevant state regulations and statutes. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties which have matured, penalties which have been incurred, proceedings which have begun and prosecutions for violations of law occurring before the effective date of this Ordinance are not affected or abated by this Ordinance.

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**SECTION VI – EFFECTIVE DATE**

This Ordinance shall take full force and effect thirty days after publication.

**SECTION VII – CERTIFICATION**

I, Tammy Beal, Clerk of Marion Township, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Marion Township Board at a regular meeting on June 28, 2007.