

Resolution No.: 15-1644
Introduced: October 17, 2006
Adopted: October 24, 2006

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the request of the County Executive

SUBJECT: Enforcement of County Code Water Quality Provisions in the City of Takoma Park

Background

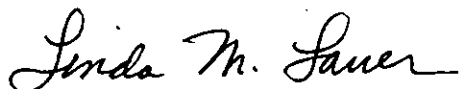
1. Under Maryland Code, Article 29, Section 3-202(a)(3), Montgomery County is prohibited from exercising any rights, powers, or duties relating to stormwater management in the City of Takoma Park unless the City and the County otherwise agree.
2. On July 24, 2006 the Takoma Park Council adopted Ordinance No. 2006-30, attached as Attachment I, which authorizes the County to administer and enforce the provisions of County code Chapter 19 (Erosion, Sediment Control, and Storm Water Management), Articles IV (Water Quality Control) and VI (General).
3. Takoma Park Ordinance No. 2006-30 also authorizes the Takoma Park city Manager to execute a Memorandum of Understanding with the County that provides for the administration and enforcement in the City of the listed County Code provisions.
4. The City Manager and the County Chief Administrative Officer have executed a Memorandum of Understanding, which is attached as Attachment 2.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County, through its Department of Environmental Protection, may administer and enforce County Code Chapter 19, Articles IV and VI, in the City of Takoma Park.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

MEMORANDUM OF UNDERSTANDING
between
MONTGOMERY COUNTY, MARYLAND
and the
CITY OF TAKOMA PARK, MARYLAND

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") made this 11 day of September, 2006, is by and between the City of Takoma Park, Maryland ("City"), a municipal corporation organized under the laws of the State of Maryland, and Montgomery County, Maryland ("County"), a body corporate and politic and local subdivision of the State of Maryland. The City and the County are hereinafter referred to collectively as the "Parties." This Agreement sets forth the Parties' agreement regarding the exercise of County authority to perform illicit discharge detection and elimination and certain other water pollution prevention activities within the City.

Section 1. Purpose.

This Agreement provides for the County to enforce the provisions of *Montgomery County Code*, Chapter 19 (Erosion, Sediment Control and Storm Water Management), Article IV (Water Quality Control) and Article VI (General) in the City. County enforcement of these provisions in the City will allow the City to comply with the minimum control measures required under Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program. The City of Takoma Park is covered under Maryland Department of the Environment, General Permit No. 03-1M-5500 for Discharges from Small Municipal Separate Storm Sewer Systems.

Section 2. Authority.

- a. By *Md. Ann. Code*, Art. 29, § 3-202, effective July 1, 1990, authority for stormwater management in the City was transferred from the Washington Suburban Sanitary Commission to the City, and the County was prohibited from exercising any rights, powers or duties relating to stormwater management in the City, unless the City and the County otherwise agreed.
- b. This Agreement sets forth the agreement between the City and the County to have the County exercise in the City of Takoma Park the powers the County carries out elsewhere in the County, pursuant to *Montgomery County Code*, Chapter 19, Articles IV and VI, to control illicit discharges and pollution in the waters of the state in the County.
- c. Nothing in this Agreement affects or limits the City's rights, powers, and duties relating to stormwater management within its corporate boundaries, as provided by *Md Ann. Code* Article 29, Title 3, Subtitle 2, *Md Code Ann.*, Environment Article, Title 4, Subtitle 2 (Stormwater Management), and Title 16, Chapters 16.04 (Stormwater Management) and 16.08 (Stormwater Management Fee System) of the *Takoma Park Code*. The Parties agree that Chapter 19, Article II (Stormwater Management) of the

Montgomery County Code does not apply in the City and no authority is granted to the County by this Agreement over stormwater management in the City.

Section 3. Code Enforcement.

a. The County is hereby authorized to administer and enforce *Montgomery County Code*, Chapter 19, Articles IV and VI, within the City of Takoma Park.

b. The County's enforcement authority under *Montgomery County Code*, Chapter 19, Articles IV and VI includes, but is not limited to, the inspection, investigation, and monitoring of discharges of pollutants in a location where they are likely to pollute waters of the state in the City; issuance of notices of violation, stop work orders, and/or corrective orders to any person causing or permitting the violation; requiring violators to submit a plan for compliance; issuing municipal infraction citations; and seeking injunctive or other appropriate judicial relief to prevent or stop violations.

c. The Montgomery County Office of the County Attorney will enforce and prosecute all orders and municipal infraction citations issued by the County and will seek injunctive or other appropriate judicial relief to prevent or stop violations occurring within the City, in accordance with the provisions of this Agreement and *Montgomery County Code*, Chapter 19, Articles IV and VI.

Section 4. Coordination and Notice of Enforcement Actions.

a. The City, through its Department of Public Works, will promptly notify the Montgomery County Department of Environmental Protection (DEP) whenever it observes or receives notice or a complaint of a violation or potential violation of *Montgomery County Code*, Chapter 19, Articles IV and VI. Such notification may be made by telephone, e-mail, fax, or by U.S. mail, as the parties deem appropriate depending upon the nature and seriousness of the violation or potential violation.

b. The County agrees to inform the City, through the City's Department of Public Works, of all activities related to the administration and enforcement of *Montgomery County Code*, Chapter 19, Articles IV and VI within the City that are performed by DEP or the Office of the County Attorney. Such notification and information may be made by telephone, e-mail, fax, or by U.S. mail, as the parties deem appropriate depending upon the nature and seriousness of the violation or potential violation.

Section 5. Indemnification.

Each party agrees to indemnify and hold harmless the other party for any claims that arise solely from the other party's acts, omissions or negligence in the performance of this Agreement. This indemnification is subject to the liability and damages caps stated in the Local Government Tort Claims Act, *Md. Code Ann.*, Cts. & Jud. Proc. §§ 5-

301 *et seq.*, as amended from time to time. This indemnification is not intended to be a waiver of governmental immunity by either the County or the City, and is not intended to create any rights or causes of action in third parties. The County will not be liable for any damages or injury occasioned by the acts, omissions or negligence of the City, its agents or employees, or by failure to comply with its obligations under this Agreement and the City will not be liable for any damages or injury occasioned by the acts, omissions or negligence of the County, its agents or employees, or by failure to comply with its obligations under this Agreement.

Section 6. Notices.

Except in emergencies, notices or complaints of violations or potential violations of *Montgomery County Code*, Chapter 19, Articles IV and VI, which may be made by telephone, any reports, notices or other communications under this Agreement will be in writing and personally delivered, mailed by first-class mail, sent by courier or overnight delivery service, faxed or e-mailed, as appropriate, as follows:

If to the County: Montgomery County Department of Environmental Protection
 Attn: Steve Martin
 255 Rockville Pike, Suite 120
 Rockville, MD 20850
 Phone: 240-777-7700
 Fax: 240-777-7752
 E-Mail: steve.martin@montgomerycountymd.gov

If to the City: Daryl Braithwaite, Public Works Director
 City of Takoma Park Department of Public Works
 31 Oswego Avenue
 Silver Spring, MD 20912
 Phone: (301) 891-7615
 Fax: (301) 585-2405
 E-Mail: DarylB@takomagov.org

Either party may change the person, address, phone, fax or e-mail for notices to the other party by a notice in writing to the other. Any notice under this Agreement will be deemed given when it is received by the other party or, for notices given by mail, three days after the notice is deposited, properly addressed, and postage prepaid, in the United States mail.

Section 7. Term of Agreement and Termination.

a. This Agreement becomes effective upon execution by all parties and will remain in effect for a period of one year. The Agreement will be automatically renewed for additional one year terms unless terminated by either party in accordance with subsection b. of this Section 7.

b. Either the City or the County may terminate this Agreement at any time upon ninety (90) days written notice to the other party.

Section 8. Miscellaneous.

a. **Entire Agreement.** This Agreement contains the final and entire understanding of the parties with respect to the subject matter of this Agreement.

b. **Assignability.** This Agreement and any rights or obligations hereunder may not be assigned, transferred or subcontracted by either party without the prior written consent of the other party.

c. **Amendments or Modifications to be in Writing.** This Agreement may only be amended or modified by a writing signed by both parties.

d. **Binding Effect.** This Agreement is binding upon the parties and will inure to the benefit of their successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the day and year first above written.

For City of Takoma Park, Maryland:

For Montgomery County, Maryland:

CITY OF TAKOMA PARK, MARYLAND
Takoma Park Community Center
7500 Maple Avenue
Takoma Park, MD 20912

MONTGOMERY COUNTY, MARYLAND
Executive Office Building
101 Monroe Street
Rockville, MD 20850-2540

BY: Barbara B. Matthews
Barbara B. Matthews, City Manager

BY: Bruce Romer
Bruce Romer, Chief Administrative Officer

Date: 08-24-06

Date: 9-11-06

Approval Recommended:

BY: James A. Caldwell
James Caldwell, Director
Department of Environmental Protection

Date: September 7, 2006

Approved as to form and legal sufficiency
by Takoma Park City Attorney:

Approved as to form and legal sufficiency
by the Office of the County Attorney:

BY: Linda S. Perlman
Linda S. Perlman, Assistant City Attorney

BY: Walter E. Wilson
Walter E. Wilson, Associate County Attorney

Date: 8/24/06

Date: 9/7/06