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MEMORANDUM

Department of Building and Planning

DATE: February 3, 2023

TO: Yocelyn Galiano, ICMA-CM, LEED-GA  
Village Manager

FROM: Stephen R. Olmsted, AICP, LEED-GA  
Planning Director

David J. Mendez, P.E  
Public Works Director

RE: Ordinance Amending Chapter 30, Land Development Regulations -  
New Division 6.16, Illicit Stormwater Discharges and Connections

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The Village of Pinecrest and Miami-Dade County share responsibility in the application and enforcement of the requirements of the National Pollution Discharge Elimination System (NPDES), administered by the Florida Department of Environmental Protection (FDEP). In the administration of NPDES program requirements, the Public Works Department has been advised that the Village of Pinecrest is required to adopt an ordinance prohibiting illicit connections and discharges of stormwater to the Village's stormwater system.

Staff has prepared a proposed ordinance based on a model ordinance provided by FDEP. The proposed ordinance was approved at first reading by the Village Council on January 10, 2023, and is scheduled to be considered by the Local Planning Agency (LPA) and Village Council at second reading on February 14, 2023.



ORDINANCE 2023-\_\_\_\_

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PINECREST, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES, CHAPTER 30, LAND DEVELOPMENT REGULATIONS, ARTICLE 6, ENVIRONMENTAL REGULATIONS, BY CREATING DIVISION 6.16, ILLICIT STORMWATER DISCHARGES AND CONNECTIONS, TO REGULATE NON-STORMWATER DISCHARGES INTO THE VILLAGE'S STORMWATER DRAINAGE SYSTEM; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the Village of Pinecrest, Florida (the "Village"), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provides municipalities with the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

WHEREAS, the Village Charter empowers the Village Council to adopt, amend or repeal its ordinances and resolutions as may be required for the benefit of the residents of the Village; and

WHEREAS, the Village Council finds it periodically necessary to amend its Code of Ordinances and Land Development Regulations ("Code") in order to update regulations and procedures necessary to implement municipal goals and objectives; and

WHEREAS, the Village Council has identified amendments to the Village's Code that are necessary to implement the goals, objectives, and policies of the Village's Comprehensive Development Master Plan; and

WHEREAS, in order to protect the public health, safety, and general welfare of the citizens of the Village, the Village Council finds that it is necessary to regulate non-stormwater discharges, illicit discharges, and illicit connections to the storm drainage systems as required by federal and state law and the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit Process; and

WHEREAS, the Local Planning Agency, held a duly advertised public hearing on February 14, 2023; and

WHEREAS, after reviewing the Local Planning Agency's recommendations, the recommendations of Village staff, and comments from the public, the Village Council finds that the proposed amendments to its Code are in compliance and consistent with Florida law, its adopted Comprehensive Development Master Plan; and

WHEREAS, the Village Council further finds it to be in the best interest of the public health, safety and welfare of the citizens to adopt this Ordinance amending the Village's Code.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PINECREST, FLORIDA:

**Section 1. Recitals.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended.** The Village Council of the Village of Pinecrest hereby amends Article 6, "Environmental Regulations," of Chapter 30 of the Code of Ordinances as follows:<sup>1</sup>

## CHAPTER 30 – LAND DEVELOPMENT REGULATIONS

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### ARTICLE VI. – ENVIRONMENTAL REGULATIONS

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#### **Div.6.16. Illicit Stormwater Discharges and Connections.**

##### *(a) Purpose and Intent.*

The purpose of this division is to provide for the health, safety, and general welfare of the citizens of the Village of Pinecrest through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state

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<sup>1</sup> Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **yellow highlight** and ~~double strikethrough~~ or double underline.

law. This division 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 objectives of this division are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this division.

*(b) Definitions.*

For the purposes of this division, the following shall mean:

*Best Management Practices (BMPs).* Schedules of activities, prohibitions of practices, general good house keeping 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.* The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*Construction Activity.* Construction projects resulting in a land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*Hazardous Materials.* 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.

*Illegal Discharge.* Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in subsection 6.16(g) of this division.

*Illicit Connections.* An illicit connection is defined as 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 which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an administrative official; or

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an administrative official.

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

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. 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 State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the stormwater drainage system that is not composed entirely of storm water.

Person. 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. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; 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. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/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, and other drainage

structures.

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

Stormwater Pollution Prevention Plan. A document which 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, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

(c) Applicability.

This division shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an administrative official.

(d) Responsibility for Administration.

The administrative official shall administer, implement, and enforce the provisions of this division.

(e) Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this division are minimum standards; therefore this division does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(f) Discharge Prohibitions.

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. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as follows:

- (a) Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air

conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants;

(b) Discharges specified in writing by the administrative official as being necessary to protect public health and safety;

(c) Dye testing is an allowable discharge, but requires a verbal notification to the administrative official prior to the time of the test; and

(d) The prohibition shall not apply to any non-storm water 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.

2. Prohibition of Illicit Connections. The following connections shall be prohibited:

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

(b) 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; and

(c) Any person connecting a line conveying sewage to the MS4 or that allows such a connection to continue.

(g) Suspension of MS4 Access.

1. Suspension due to Illicit Discharges in Emergency Situations. The administrative official may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which 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 State. If the violator fails to comply with a suspension order issued in an emergency, the administrative official may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State, or to minimize danger to persons.

2. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4

in violation of this division may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The administrative official will notify a violator of the proposed termination of its MS4 access. The violator may petition the administrative official for a reconsideration and hearing.

3. Reinstatement without approval prohibited. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Division, without the prior approval of the administrative official.

(h) Industrial or Construction Activity Discharges.

1. Proof of Compliance. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the administrative official prior to the allowing of discharges to the MS4.

(i) Monitoring of Discharges.

1. Applicability. This Division applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
2. Access to Facilities.
  - a. The administrative official shall be permitted to enter and inspect facilities subject to regulation under this division as often as may be necessary to determine compliance with this division. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the administrative official.
  - b. Facility operators shall allow the administrative official 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 storm water, and the performance of any additional duties as defined by state and federal law.
  - c. Monitoring and Sampling. The administrative official shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the administrative official to conduct monitoring and/or sampling of the facility's storm water discharge.
  - d. Monitoring Equipment. The administrative official has the right to require the

discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall 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 shall be calibrated to ensure their accuracy.

- e. Obstructions. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the administrative official and shall not be replaced. The costs of clearing such access shall be borne by the operator.
  - f. Unreasonable Delay. Unreasonable delays in allowing the administrative official access to a permitted facility is a violation of a storm water discharge permit and of this division. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the administrative official reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this division.
  - g. Warrant. If the administrative official has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this division, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this division or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the administrative official may seek issuance of a search warrant from any court of competent jurisdiction.
- (i) *Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.*
- 1. *Best Management Practices.* The administrative official will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State. The owner or operator of a commercial or industrial establishment shall 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 storm water associated with industrial

activity, to the extent practicable, shall be deemed compliance with the provisions of this Division. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

(k) Watercourse Protection.

1. Maintenance. Every person owning property through which a watercourse passes, or such person's lessee, shall 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 shall 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.

(l) Notification of Spills.

1. 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 which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S., said person shall 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 shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the administrative official in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the administrative official within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(m) Enforcement.

1. Notice of Violation. Whenever the administrative official finds that a person has violated a prohibition or failed to meet a requirement of this Division, the administrative official may initiate action to require compliance consistent with the requirements and procedures of Article V, "Code Compliance," of Chapter 2 of the Village's Code of Ordinances including issuance of a Civil Citation or written Notice of Violation and Notice to Appear before the Special Magistrate 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 shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and/or
- (f) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the Village of Pinecrest or its designated and the expense thereof shall be charged to the violator.

*(n) Appeal of Civil Violation Notice or Notice of Violation and Notice to Appear*

1. Any person receiving a Civil Violation Notice may appeal the determination to the Special Magistrate in accordance with the requirements and procedures of Article V, "Code Compliance," of Chapter 2 of the Village's Code of Ordinances. A Special Magistrate's Order may be appealed in accordance with the requirements and procedures of Article V, "Code Compliance," of Chapter 2 of the Village's Code of Ordinances.

*(o) Enforcement Measures After Appeal.*

1. If the violation has not been corrected pursuant to the requirements set forth in the Civil Violation Notice or Notice of Violation and Notice to Appear or, in the event of an appeal, within 30 days of the decision of the Miami-Dade County Court upholding the decision of the Special Magistrate, then the Village of Pinecrest shall be authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Village or its designated contractor to enter upon the premises for the purposes set forth above.

*(p) Cost of Abatement of the Violation.*

1. 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 objection to the amount of the assessment within 30 days of the notification and the objection shall be scheduled for consideration by the Village Council. If the amount due is not paid within a timely manner as determined by the decision of the Village Council, the charges shall become a special assessment against the property and shall constitute a lien

on the property for the amount of the assessment.

(q) *Injunctive Relief.*

1. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Division. If a person has violated or continues to violate the provisions of this division, the administrative official may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(r) *Compensatory Action.*

1. In lieu of enforcement proceedings, penalties, and remedies authorized by this Division, the administrative official may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(s) *Violations Deemed a Public Nuisance.*

1. 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 Division 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, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(t) *Criminal Prosecution.*

1. Any person that has violated or continues to violate this division shall be liable to criminal prosecution to the fullest extent of the law.
2. The administrative official may recover all attorney's fees court costs and other expenses associated with enforcement of this division, including sampling and monitoring expenses.

(u) *Remedies not Exclusive.*

1. The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the administrative official to seek cumulative remedies.

**Section 3. Codification.** It is the intention of the Village Council, and it is hereby

ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Pinecrest; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 4. Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 5. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 10<sup>th</sup> day of January, 2023.

PASSED AND ADOPTED on second reading this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2023.

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Joseph M. Corradino, Mayor

ATTEST:

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Priscilla Torres., CMC  
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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Mitchell Bierman  
Village Attorney

Motion on Second Reading by:  
Second on Second Reading by:

Vote: