



# EROSION CONTROL PERMIT APPLICATION MINOR

(Disturbing LESS than one acre)

The undersigned makes application for a Minor Erosion Control Permit as follows:

Property Owner: \_\_\_\_\_

Property Address or Legal Description: \_\_\_\_\_

Applicant (if other than Owner): \_\_\_\_\_

Applicant Address (if other than Owner): \_\_\_\_\_

Applicant Email: \_\_\_\_\_

Applicant Phone Number: \_\_\_\_\_ ☐ Mobile ☐ Home ☐ Business

This Minor Erosion Control Permit Application shall include:

- A Grading and Erosion Control Plan shall be submitted as defined in the Marion Code Chapter 155 – *Erosion and Sediment Control*. This shall include dimensioned site plan including but not limited to: address or legal description, existing and proposed elevations, fill limits, property lines, and easements of record.
- Payment of the \$25 permit fee. (Fees per City Resolution #19943 dated 7/3/08.)

Applicant affirms that applicant is the property owner or is authorized by the property owner to make this application, and that this application is accurate to the best of the applicant's knowledge. Proposed fill activities are subject to easement and deed restrictions of record. This application and permit if granted are subject to all laws of the State of Iowa and Ordinances of the City of Marion, Iowa.

By signing below, the applicant acknowledges that he/she has read and is aware of the requirements established in the Marion Municipal Code Chapter 155 *Erosion and Sediment Control*, Chapter 156 *Storm Water Management*, and Chapter 91 *Illicit Discharge to Storm Sewer System*. Applicant certifies that the land disturbing activities described in this application will be conducted in a manner that will ensure compliance with the Marion Municipal Code.

The owner/applicant shall be responsible for the removal of all debris spilled or washed onto adjoining properties and City right-of-way during construction.

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

For Engineering Department Use Only:

Issuance Date: \_\_\_\_\_ Staff Approval: \_\_\_\_\_

PERMIT EXPIRES ONE YEAR FROM ISSUANCE



# EROSION CONTROL PERMIT APPLICATION MAJOR

(Disturbing MORE than one acre)

The undersigned makes application for a Major Erosion Control Permit as follows:

Property Owner: \_\_\_\_\_

Property Address or Legal Description: \_\_\_\_\_

Applicant (if other than Owner): \_\_\_\_\_

Applicant Address (if other than Owner): \_\_\_\_\_

Applicant Email: \_\_\_\_\_

Applicant Phone Number: \_\_\_\_\_ ☐ Mobile ☐ Home ☐ Business

Cubic yards of fill placed on the site: \_\_\_\_\_ Area of land-disturbing activity (acres): \_\_\_\_\_

This Major Erosion Control Permit Application shall include:

- A Stormwater Pollution Prevention Plan (SWPPP) shall be submitted that conforms to the requirements of General Permit No. 2 issued by the Iowa Department of Natural Resources. **Major erosion control permits are only valid for sites covered under General Permit No. 2 issued by the Iowa DNR.** The GP#2 Authorization Number for this site is \_\_\_\_\_.
- Complete 24-hour contact information for the site owner and the person in responsible charge of providing and maintaining sedimentation and erosion control for the site.
- Payment of the \$100 permit fee. (Fees per City Resolution #19943 dated 7/3/08.)

Applicant affirms that applicant is the property owner or is authorized by the property owner to make this application, and that this application is accurate to the best of the applicant's knowledge. Proposed fill activities are subject to easement and deed restrictions of record. This application and permit if granted are subject to all laws of the State of Iowa and Ordinances of the City of Marion, Iowa.

By signing below, the applicant acknowledges that he/she has read and is aware of the requirements established in the Marion Municipal Code Chapter 155 *Erosion and Sediment Control*, Chapter 156 *Storm Water Management*, Chapter 91 *Illicit Discharge to Storm Sewer System*, and Iowa DNR General Permit No. 2. Applicant certifies that the land disturbing activities described in this application will be conducted in a manner that will ensure compliance with the Marion Municipal Code and Iowa DNR General Permit No. 2.

The owner/applicant shall be responsible for the removal of all debris spilled or washed onto adjoining properties and City right-of-way during construction.

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

For Engineering Department Use Only:

Issuance Date: \_\_\_\_\_ Staff Approval: \_\_\_\_\_

**PERMIT EXPIRES ONE YEAR FROM ISSUANCE**

## **CHAPTER 155**

### **EROSION AND SEDIMENT CONTROL**

<b>155.01 General</b>	<b>155.10 Requirements for Sites Covered by Iowa DNR</b>
<b>155.02 Definitions</b>	<b>General Permit No. 2</b>
<b>155.03 Major Erosion Control Permit Required</b>	<b>155.11 Inspection, Notice to Comply and Notice of Violation</b>
<b>155.04 Minor Erosion Control Permit Required</b>	<b>155.12 Powers of Authority for Inspection</b>
<b>155.05 Permit Renewals</b>	<b>155.13 Repair and Clean-up of Damage</b>
<b>155.06 Filling Requirements</b>	<b>155.14 Enforcement</b>
<b>155.07 SWPPP Required</b>	<b>155.15 Appeals</b>
<b>155.08 SWPPP Requirements</b>	<b>155.16 Fees Established</b>
<b>155.09 SWPPP Review and Approval Procedure</b>	

#### **155.01 GENERAL.**

1. Soil erosion contributes to the impairment of drainage ways, increases road and storm sewer maintenance costs, contributes to the destruction and obstruction to traveled roadways creating a potential hazard for vehicular traffic, and contributes to contamination and degradation of land surfaces and streams, flooding and dusty conditions. This chapter establishes requirements in an effort to control erosion and sediment transport.

2. Owners of certain construction sites are required, under rules contained in General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities ("General Permit No. 2"), to obtain coverage through the Iowa DNR under that permit.

3. Under its Municipal Stormwater National Pollution Discharge Elimination System permit, which permit is on file at the offices of the City Clerk and the City Engineer and is available for public inspection during regular office hours, the City is required to regulate, treat, and control stormwater discharges into the City's stormwater drainage system. One provision of that permit requires the City to enforce the requirements of General Permit No. 2 jointly with the Iowa DNR.

4. General Permit No. 2 and the document entitled "Summary Guidance, A Brief Guide to Developing Pollution Prevention Plans and Best Management Practices", issued and administered by the Iowa DNR, are hereby adopted and by reference made part of this section as if fully set forth herein. Any act these documents require or prohibit, is required or prohibited by this section. Any future amendments, revisions, or modifications to these documents, incorporated herein, are intended to be made a part of this section.

5. This chapter also establishes requirements for grading, filling, fill material, and for obtaining Erosion Control Permits. These requirements

include use of suitable fill material, stable slope construction, proper site drainage, and usability of public and private easements.

6. Except as provided in Section 155.04, Minor Erosion Control Permit Required, no person shall engage in land-disturbing activities within the City unless they have received an Erosion Control Permit from the City.

**155.02 DEFINITIONS.** Wherever used in this chapter the terms listed below will have the meanings indicated.

1. "Applicant" means any individual, firm, corporation, association or partnership, or proprietor of land to undergo land-disturbing activities.
2. "Certified professional erosion and sediment control specialist" means a specialist in the area of soil erosion and sediment control as certified by the Soil and Water Conservation Society and the International Erosion Control Association.
3. "Civil engineer" means a professional engineer licensed in the state of Iowa to practice civil engineering.
4. "Clearing and grubbing" means removal of unwanted growth, in the form of trees, wood, shrubs, brush, or stumps on a site.
5. "Design professional" means a licensed civil engineer or certified professional erosion and sediment control specialist.
6. "Design Standards Manual" means the latest edition of SUDAS as approved by the City Council.  
*(Ord. 15-24 – Feb. 16 Supp.)*
7. "Development" means the alteration of land from its existing state.
8. "Disturbed area" means the part of a site on which land-disturbing activities take place. All land area that is to be disturbed at any time during the project is to be counted in determining the disturbed area, even if part of the land will be stabilized before another part is disturbed.
9. "Erosion" means the wearing away of the land surface by running water, wind, ice, gravity, or other geological, natural, or man made agents.
10. "Erosion Control Officer" means the City Engineer or designee.
11. "Erosion Control Permit" means a Major Erosion Control Permit or a Minor Erosion Control Permit.
12. "Filling" means placing materials to effectively change the site contours. This shall include placing materials from the site itself, or from off site.

13. "Fill material" means soil, stone, rock, brick, Portland cement or asphaltic concrete, or sand.
14. "Fill site" means land upon which fill materials are placed and which placement does not require a Sanitary Disposal Permit issued by the State of Iowa.
15. "Final stabilization" means that all land-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70 percent for the area has been established or equivalent stabilization measures have been employed.
16. "General Permit No. 2" means General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, as authored and administered by the Iowa DNR.
17. "Iowa DNR" means the Iowa Department of Natural Resources.
18. "Land-disturbing activities" means clearing, grading, excavating, filling, or removal of vegetation, paving, or buildings, exposing earthen material on a site.
19. "Major Erosion Control Permit" means a permit issued by the City to engage in land-disturbing activities on a site with one acre or greater disturbed area.
20. "Minor Erosion Control Permit" means a permit issued by the City to engage in land-disturbing activities on a site of greater than one-quarter acre and less than one acre disturbed area.
21. "Responsible party" means one or more persons who have applied for or hold a City Erosion Control Permit, or who own, control, or perform work on a site.
22. "Sediment" means solid material, both natural and manmade, that is in suspension, has been transported, or has been moved from its origin by air, water, gravity, or ice and has been deposited by the action of water or wind.
23. "Site" means property where land-disturbing activities take place.
24. "Stabilization or stabilized" means vegetative cover with a density of 70 percent has been established, or equivalent stabilization measures have been employed by chemical, biological, structural or non-structural BMP methods that prevents soil detachment or transport thus limiting the annual cumulative soil loss to a rate equivalent to that of a site containing a 70 percent vegetative cover density.
25. "Standard Specifications" means the latest edition of SUDAS as approved by the City Council.

*(Ord. 15-24 – Feb. 16 Supp.)*

26. “Stormwater drainage system” means all manmade facilities and structures and all natural watercourses that are owned by the City, or that are within a drainage easement owned by the City, and that are used for collection, storage, treatment, and conveyance of stormwater from any area, through any area. This includes without limitation all stormwater facilities, canals, creeks, curb and gutter, dams, ditches, floodwalls, flumes, gulches, gullies, levees, ravines, siphons, streams, streets, and swales. For the purpose of illicit discharge regulation, any discharge to an area tributary to the stormwater drainage system shall be treated as a discharge to the stormwater drainage system.

27. “Stormwater facilities” means anything built or used for the control of stormwater, including without limitation catch basins, channels, culverts, detention basins, energy dissipation structures, inlets, manholes, outlets, pipes and other conduits, retention basins, and roadways and gutters.

28. “Stormwater Pollution Prevention Plan” means a document conforming to the requirements therefore contained in General Permit No. 2 and this chapter, prepared and certified by a design professional.

29. “SWPPP” means Stormwater Pollution Prevention Plan.

### **155.03 MAJOR EROSION CONTROL PERMIT REQUIRED.**

1. Sites or common plans of development that will result in a total disturbed area of one or more acres shall obtain a Major Erosion Control Permit prior to any land-disturbing activities.

2. All Major Erosion Control Permits shall be issued by the Erosion Control Officer upon approval of a completed Application for Erosion Control Permit on a form provided by the City. The application shall be signed by the title holder of the site, together with the applicant, if different from the title holder.

3. Sites required to obtain an Erosion Control Permit shall comply with Section 155.10, Requirements for Sites Covered by the Iowa DNR General Permit No. 2, herein.

4. A Major Erosion Control Permit Application shall include the following:

A. A completed Application for Erosion Control Permit on a form provided by the Erosion Control Officer.

B. A SWPPP conforming to:

(1) The requirements of this chapter, and the requirements of General Permit No. 2.

(2) If a SWPPP for the site has previously been submitted to the City and has not been modified, the applicant shall submit a signed and dated statement that the SWPPP has not been modified, in which case the SWPPP need not be resubmitted.

C. Payment of the permit fee.

5. The permittee shall provide the Erosion Control Officer with all material submitted as part of a Notice of Discontinuation when such a notice is filed with the Iowa DNR.

#### **155.04 MINOR EROSION CONTROL PERMIT REQUIRED.**

1. Sites or common plans of development that will result in a disturbed area of greater than 1/8 of an acre but less than one acre shall obtain a Minor Erosion Control Permit prior to any land-disturbing activity, except:

A. Filling or construction within floodplain limits as established by the Federal Emergency Management Agency and in the Marion Floodplain Management Ordinance will require a separate additional permit under that ordinance, in addition to the permits required by this chapter.

B. The following activities are exempt from the requirements of this chapter:

(1) Crop production activities;

(2) Cemetery graves;

(3) Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards;

(4) Total fill quantity of less than twenty-five cubic yards in a twelve month time period;

(5) Public improvements.



2. All Minor Erosion Control Permits shall be issued by the Erosion Control Officer upon approval of a completed Application for Erosion Control Permit on a form provided by the City. The application shall be signed by the title holder(s) of the site, together with the applicant, if different from the title holder(s).
3. A Minor Erosion Control Permit Application shall include the following:
  - A. A completed Application for Erosion Control Permit on a form provided by the City.
  - B. A dimensioned drawing including the following:
    - (1) Property address and legal description;
    - (2) Property lines and any existing easements of record;
    - (3) Limits of area of land-disturbing activities;
    - (4) Existing and proposed ground elevations (two-foot maximum interval);
    - (5) A SWPPP if required under section 155.07, SWPPP Required.
    - (6) Other information as required by the Erosion Control Officer.

#### **155.05 PERMIT RENEWALS.**

1. Erosion control permits shall be valid for a period of one year from the date of issuance and may be renewed as provided for herein. A renewal application shall include the following:
  - A. A completed Application for Erosion Control Permit Renewal on a form provided by the City.
  - B. Payment of the renewal fee.
  - C. Any information required in 155.03 (4) (B) (for a major permit) or 155.04 (3) (B) (for a minor permit) if it has changed. A major permit renewal shall include a certification by the design professional that all changed conditions are included in the renewal application.
2. The City shall revoke an erosion control permit or decline renewal if unacceptable materials are being deposited at the site, or if the permittee has failed to comply with any of the regulations set forth in this chapter, or any requirement of law, statute or regulation.



**155.06 FILLING REQUIREMENTS.**

1. Clearing and grubbing shall be performed according to Section 2010 of the SUDAS Specifications Manual.

*(Ord. 15-24 – Feb. 16 Supp.)*

2. Fill material shall be placed according to the SWPPP as accepted by the City.
3. Interim filling during construction shall be placed in a safe manner. Slope stabilization, inspection and maintenance of erosion control, and soil stabilization where work has been suspended shall be according to the Design Standards Manual.
4. Finish grading shall be according to Section 2010 of the SUDAS Specifications Manual.

*(Ord. 15-24 – Feb. 16 Supp.)*

5. Finish slopes shall not exceed a 3:1 ratio on any slope facing and terminating within 15 feet of a property line.

6. Unacceptable Fill Materials.

A. Fill materials shall not include hazardous waste, synthetic material, metal, and organic material other than natural topsoil incidental to excavation except as noted below. Concrete, brick, tile, and other manufactured inert material shall not be greater than 18" in its greatest dimension. Asphalt paving material shall not be used for bank stabilization or where the final location will be below the known water table.

B. Trees may be buried within the site they originate from, provided they are not buried within structural footprints or in earthwork providing structural support, such as for building foundations and roadways. Trees shall not be placed in the trench backfill for sewers, culverts, and other underground utilities. Trees shall not be imported onsite from offsite for use as fill.

**155.07 SWPPP REQUIRED.**

1. Sites with land-disturbing activities shall fall into one of two categories as determined by the Erosion Control Officer as set forth herein below:

A. Sites with a disturbed area less than one acre shall not require submittal of a SWPPP. However, the owner of a site is required to plan and implement erosion control measures as described in the brochure "Erosion Control for Small Site Development". The Erosion Control Officer shall make this brochure available. The Erosion Control Officer may require an acceptable SWPPP for sites with a disturbed area less than one acre in cases warranted by site conditions. Such site conditions may include, but are not limited to:

- (1) Site contains slopes of 9 percent or greater;

- (2) Site is adjacent to a water body or open drainage channel; sinkholes, wetlands and shallow depth to bedrock;
  - (3) The site has been identified as having severe erosion or as creating a significant impact on adjacent properties, water bodies, or open drainage channels due to erosion and sediment deposition.
- B. Sites with a disturbed area greater than or equal to one acre shall require an acceptable SWPPP meeting the requirements of this chapter, certified by a design professional, and approved by the Erosion Control Officer.
- 2. The SWPPP must be reviewed and approved by the Erosion Control Officer prior to the commencement of land-disturbing activities.
- 3. The City's acceptance of a SWPPP does not constitute approval of Design Standards Manual exceptions unless specifically requested and approved by the Erosion Control Officer.

#### **155.08 SWPPP REQUIREMENTS.**

- 1. Every SWPPP submitted to the City in support of an application for a Major Erosion Control Permit:
  - A. Shall contain complete 24-hour contact information for the site owner and the person in responsible charge of providing and maintaining sedimentation and erosion control for the site. The permittee shall inform the Erosion Control Officer within seven calendar days of any change in this contact information.
  - B. Shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the Iowa DNR in connection with General Permit No. 2, including those published as Summary Guidance for General Permit No. 2 by the Iowa DNR. The Erosion Control Officer may develop policies modifying these requirements for sites with a disturbed area less than one acre.
  - C. Shall comply with all other applicable state or federal permit requirements in existence at the time of application.
  - D. Shall include a drainage plan prepared according to the Design Standards Manual. The drainage plan shall be accompanied by a drainage report prepared according to the City Engineering Department Drainage Report Process Handbook. This handbook shall be available in the City Engineering Department. The drainage report shall at a minimum demonstrate the design of proposed grading, erosion, and sediment control if constructed per plan is not expected to adversely impact adjacent properties.
  - E. Shall be prepared by a design professional; and

- F. Shall include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this section.
2. The SWPPP shall be modified by a design professional as required in General Permit No. 2. Any modification of a SWPPP shall meet the requirements above.

**155.09 SWPPP REVIEW AND APPROVAL PROCEDURE.** The applicant shall submit a SWPPP for the site, meeting the requirements established in the Design Standards Manual, to the Erosion Control Officer for review and approval, as follows:

1. The Erosion Control Officer shall review the submittal for compliance with the requirements of a SWPPP as set forth in the Design Standards Manual. Following the review, the Erosion Control Officer may return comments to the design professional.
2. The Erosion Control Officer shall complete initial review and issue comments if needed back to the preparer in 10 working days after submittal. The actual time required is a function of the submittal complexity and overall workload of the Erosion Control Officer.
3. Following receipt of comments from the Erosion Control Officer, the applicant shall provide a revised submittal to the Erosion Control Officer in accordance with any requested revisions.
4. The Erosion Control Officer may require supporting documentation as needed to demonstrate conformance with these requirements. Issuance of an Erosion Control Permit may be delayed pending receipt of the documentation.
5. If the submittal is complete, and meets the requirements as set forth herein, the Erosion Control Officer shall approve the plan.

**155.10 REQUIREMENTS FOR SITES COVERED BY IOWA DNR GENERAL PERMIT NO. 2.**

1. The City shall not allow any land-disturbing activity on a site for which coverage under General Permit No. 2 is required, nor shall the City issue any permit, authorization, or license allowing such activity, until the site owner has obtained coverage for the site under General Permit No. 2 from the Iowa DNR.
2. Any responsible party who is required to obtain, or has obtained, coverage under General Permit No. 2 shall comply with all the requirements of General Permit No. 2. Failure to do so is a violation of this section. Completion of work shown in a Stormwater Pollution Prevention Plan submitted under the provisions of General Permit No. 2 is a requirement of General Permit No. 2 and failure to complete such work is a violation of this section.
3. For sites covered under General Permit No. 2 where the ownership changes, the Enforcement Officer must be notified of the title transfer within 30 days, except in the case of single-lot sales, which shall be recorded on the SWPPP. The new owner shall be subject to all terms and conditions of the Erosion Control Permit. A copy of the notice of transfer that was sent to the Erosion Control Officer shall be included in the SWPPP. For sites that are part of a larger common plan of development such as a housing or commercial development project, if a permittee transfers ownership of all or any part of property subject to an Erosion Control Permit, both the permittee and transferee shall be responsible for compliance with the provisions of General Permit No. 2 and the Erosion Control Permit for that portion of the project which has been transferred including when the transferred property is less than one acre in area. If the new owner agrees in writing to be solely responsible for compliance with the provisions of General Permit No. 2 and the Erosion Control Permit for the property which has been transferred, then the existing permittee shall be relieved of responsibility for compliance with General Permit No. 2 and the Erosion Control Permit for the transferred property, from and after the date the transfer of responsibility is attached to the SWPPP.

**155.11 INSPECTION, NOTICE TO COMPLY, AND NOTICE OF VIOLATION.**

1. The Erosion Control Officer shall inspect the site in response to reports from third parties or at other times, at the Erosion Control Officer's discretion.
2. The Erosion Control Officer shall issue a Notice to Comply to the responsible party or parties, describing any problems and specifying a date and time by which compliance must be achieved.
  - A. The Erosion Control Officer may modify a Notice to Comply and may authorize, in writing, an extension to the specified date and time by which compliance must be achieved.

- B. Failure to achieve compliance by the specified date and time is a violation of this section.
- 3. The Erosion Control Officer shall, upon determination of any violation of this section, issue a Notice of Violation in writing to the responsible party or parties, indicating the nature of the violation and ordering the action necessary to correct it.
  - A. The Notice of Violation may:
    - (1) Order the discontinuance of any illegal work, specifying a date and time for such discontinuance; and
    - (2) Require the repair and cleanup of any damage done due to failure to comply with General Permit No. 2, specifying a date and time for completion of repair and cleanup; and
    - (3) Order the withholding of any building or occupancy permits for the site, and
    - (4) Order the discontinuance of any or all work at the site, including at the Erosion Control Officer's discretion work not directly related to the cause and prevention of erosion and sedimentation, except potential life safety related work and work necessary to achieve compliance and to repair and clean up damage, specifying a date and time for such discontinuance to commence and conditions for such discontinuance to cease.
  - B. Failure to comply with any order in a Notice of Violation is an additional violation. Each day of such failure constitutes a separate violation.
  - C. The Erosion Control Officer may modify a Notice of Violation and may authorize, in writing, an extension to the specified dates and times therein.
  - D. The Notice of Violation shall, where necessary or appropriate, recommend to the City Attorney the institution of legal or equitable actions that may be required for the enforcement of this section.
- 4. Communication to a responsible party's employee, partner, attorney, agent, contractor, or subcontractor shall be regarded as communication to the responsible party for the purpose of this section.
- 5. Communication to one responsible party shall be regarded as communication to each responsible party for the purpose of this section.

#### **155.12 POWERS OF AUTHORITY FOR INSPECTION.**

- 1. **Right of Entry.** The Erosion Control Officer and authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and

testing in accordance with the provisions of this chapter. The applicant, owner, or titleholder shall be deemed to have consented to such entry by submission of an application for any permit or plan contemplated in this chapter. Barring or delaying such inspection is a violation of this section.

2. The Erosion Control Officer shall have access to and be able to copy any records that must be kept under the conditions of General Permit No. 2 within three business hours, where a business hour is any hour between 8:00 AM and 3:30 PM on a non-holiday weekday.

#### **155.13 REPAIR AND CLEAN-UP OF DAMAGE.**

1. For any site, whether or not covered by an Erosion Control Permit or other stormwater discharge permit, the City may clean up eroded sediment or tracked soil deposited on public property if:

A. Corrective action has not been completed within 24 hours or within an extended deadline granted in writing by the City; or

B. In the judgment of the Erosion Control Officer, damage to the environment is ongoing and prompt corrective action would be intended to reduce such damage.

2. If the City cleans up such material deposited off site, the Erosion Control Officer will invoice the responsible party or parties for the City's actual costs including overhead, which may be recorded as an assessment against the property and constitute a lien thereon.

3. Failure to pay an invoice under this section within 30 days shall constitute a violation of this section.

**155.14 ENFORCEMENT.**

1. Violation of any provision of this chapter may be enforced as a municipal infraction within the meaning of Iowa Code 364.22, pursuant to Chapter 4 of this Code of Ordinances.
2. Violation of any provision of this chapter may also be enforced by civil action including an action for injunctive relief.
3. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

**155.15 APPEALS.** Anyone claiming to be aggrieved by any determination made by the Erosion Control Officer may within 5 days of the date of such determination appeal to the Construction Codes Review Board and in writing state his or her reasons for requesting such order to be rescinded or modified. The City Manager shall review the determination of the Erosion Control Officer, and if reasonable grounds exist, shall modify, withdraw or order compliance with said determination. Anyone claiming to be aggrieved by the determination made by the Construction Codes Review Board shall have such rights of appeal as provided by the law.

**155.16 FEES ESTABLISHED.** The City Council may establish fees by resolution for permit applications, permit renewal applications, inspections, and for the review and processing of documents necessitated by this chapter. When such fees are established a submittal shall not be considered unless the appropriate fee has been submitted to the City.

(Ch. 155 – Ord. 06-17 - Nov. 06 Supp.)



## CHAPTER 156

### STORM WATER MANAGEMENT

156.01 Goal	156.09 Erosion Control
156.02 Definitions	156.10 Inspection of Storm Water Management Features
156.03 Related Ordinances	156.11 Maintenance
156.04 Exemptions	156.12 Financing
156.05 Application	156.13 Sump Pump Connections
156.06 Site Plan Submittal	156.14 Savings Clause
156.07 Storm Water Management Requirements	156.15 Penalties
156.08 Waiver and Appeal	

**156.01 GOAL.** The goal of this chapter is to provide comprehensive management and control of storm water runoff in an environmentally sound, safe and economical manner such that only minor inconvenience is experienced by the people and property within the City and its two-mile extraterritorial jurisdiction.

**156.02 DEFINITIONS.** Unless specifically defined below, words or phrases used in this chapter shall be defined in accordance with the definitions in Section 176.39 (Flood Plain Regulations) and of Chapter 175 (Subdivision Regulations). Words or phrases not defined below or in said chapters shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

1. “BMP” or “best management practice” means a practice or combination of practices that are the most effective and practicable (including technological, economic and institutional considerations) means of controlling point or nonpoint source pollutants at levels compatible with environmental quality goals.
2. “Capacity” (of a storm water facility) means the maximum volume or rate of conveyance available in a storm water management facility, including freeboard, to store or convey storm water without damage to public or private property.
3. “Channel” means a natural or manmade open watercourse with definite bed and banks which periodically or continuously contains moving water; or which forms a link between two bodies of water.
4. “City Engineer” means the City Engineer of the City or his/her designated representative.
5. “Civil engineer” means a professional engineer licensed in the State of Iowa to practice in the field of civil works.
6. “Comprehensive Plan” means the plan or series of plans prepared by the City or by the Corridor Metropolitan Planning Organization to guide the development and redevelopment of the City and the surrounding area. Such a comprehensive plan may include a Major Street Plan, Land Use Policy Plan, Open Space Plan, and other applicable plans available through the Department of Planning and Development.
7. “Control structure” means part of a storm water management facility designed to regulate the storm water runoff release rate.

8. "Design Standards Manual" means the latest edition of SUDAS as approved by the City Council.

*(Ord. 15-24 – Feb. 16 Supp.)*

9. "Detention basin" means a storm water management facility designed, constructed or modified to provide short term storage of storm water runoff, which reduces the peak overflow to a rate less than the peak inflow.

10. "Development" means the improvement of land from its existing state or significant alteration.

11. "Drainage area" means an area of land contributing to storm water runoff.

12. "Drainage system" means the surface and sub-surface system for the removal of water from land, including both natural elements (streams, ponds, etc.) and manmade elements (ditches, channels, storm sewers, etc.).

13. "First flush" means an initial rain event up to one inch (1") of accumulation that carries soil particles and pollutants from streets and parking lots into the storm sewer system and eventually depositing the pollutants into the streams or lakes.

14. "Five-year storm" means a rainfall of given intensity and duration having a twenty percent (20%) chance of occurring in any one year. This does not imply that it will occur only once in five (5) years, or having occurred, will not happen again for five (5) years.

15. "Hundred-year storm" means a rainfall of given intensity and duration having a one percent (1%) chance of occurring in any one year. This does not imply that it will occur only once in 100 years, or having occurred, will not happen again for 100 years.

16. "Hydrograph" means a graph showing, for a given point on a stream or conduit, the storm water runoff flow rate with respect to time.

17. "Infiltration" means the downward movement of water from the land surfaces into the soil profile.

18. "Infiltration basin" means a type of best management practice (BMP) that is used to manage storm water runoff, prevent flooding and downstream erosion, and improve water quality in an adjacent river, stream, lake or bay. It is essentially a shallow artificial pond that is designed to infiltrate storm water through permeable soils into the groundwater aquifer. Infiltration basins do not discharge to a surface water body under most storm conditions, but are designed with overflow structures (pipes, weirs, etc.) that operate during flood conditions.

19. "Overflow system" means the path taken by storm water runoff as a result of flows which exceed the capacity of the underground drainage system. This path may include streets, channels, drainage ways, or areas of sheet flows, and be located on public property or private property with an easement.

20. "Post-development runoff" means the volume and rate of flow of storm water discharged from a drainage area after a proposed development or other manmade action involving construction, excavation, or fill that alters land or vegetation is completed.

21. "Pre-development runoff" means the volume and rate of flow of storm water discharged from a drainage area prior to a proposed development or other manmade action involving construction, excavation or fill that alters land or vegetation.
22. "Retention basin" means a storm water management facility designed, constructed or modified to provide long-term storage of storm water runoff, which reduces the peak outflow during a specific rainfall event. This facility is typically designed to maintain a specific water elevation (privately owned).
23. "Riparian area" means a vegetated ecosystem along a water body through which energy, materials and water pass. Riparian areas characteristically have a high water table and are subject to periodic flooding.
24. "Site" means a lot, parcel, or tract of land, or portion thereof, where development is occurring, or has occurred, and may, or may not, require additional permits.
25. "Storm sewer system" means facilities for the conveyance of storm water runoff, typically a series of conduits and appurtenances, to accommodate frequent storms, not generating large peak discharges. These facilities usually include conduits, street gutters and small swales.
26. "Storm water drainage system" means all manmade facilities and structures and all natural watercourses that are owned by the City, or that are within a drainage easement owned by the City, and that are used for collection, storage, treatment, and conveyances of storm water from any area, through any area. This includes without limitation all storm water facilities, canals, creeks, curb and gutter, dams, ditches, floodwalls, flumes, gulches, gullies, levees, ravines, siphons, streams and swales. For the purpose of illicit discharge regulation, any discharge to an area tributary to the storm water drainage system shall be treated as a discharge to the storm water drainage system.
27. "Storm water facilities" means anything built or used for the control of storm water, including without limitation catch basins, channels, culverts, detention basins, energy dissipation structures, inlets, manholes, outlets, pipes and other conduits, retention basins, and roadways and gutters.
28. "Storm Water Management Plan" or "SWMP" means a site plan, certified by a Civil Engineer, Landscape Architect, or Certified Inspector of Sediment and Erosion Control, including materials, construction phasing, grading activities, and methods used for mitigation of increased storm water runoff from the site under the requirements set forth in the Design Standards Manual.
29. "Storm Water Pollution Prevention Plan" means a document conforming to the requirements therefore contained in General Permit No. 2 and this chapter, prepared and certified by a design professional as defined herein.
30. "SWPPP" means Storm Water Pollution Prevention Plan.
31. "Storm water runoff" means the flow of water resulting from precipitation upon a surface area, not absorbed by the soil or plant material.
32. "Storm water runoff release rate" means the amount of storm water runoff discharged from dominant to subservient land.

33. "Storm water storage area" means an area designated to store excess storm water.
34. "Watercourse" means any stream, creek, reservoir, lake, pond, or natural or artificial drainage way.
35. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (i) at least periodically, the land supports predominately hydrophytes; (ii) the substrate is predominately undrained hydric soil; and (iii) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of the year. The Corp of Engineers have jurisdiction over wetlands determined to be of importance.
36. "Open loop geothermal heating/cooling system" means a heating/cooling system where water is extracted from a pond, lake, or well, circulated through a heat pump unit where the heat is extracted, then the water is discharged to a storm sewer or surface water drainage system. For the purpose of this chapter open loop geothermal heating/cooling systems using well re-injection do not apply.

#### **156.03 RELATED ORDINANCES.**

1. Supplemented Ordinances. The following chapters of this Code of Ordinances are hereby supplemented:
  - A. Chapter 175 - Subdivision Ordinance.
  - B. Chapter 176 - Zoning Ordinance
  - C. Chapter 160 - Building Code.
2. Greater Restrictions. Where conditions imposed by any provision of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose higher standards shall govern.

#### **156.04 EXEMPTIONS.** The following are exempt from the requirements of this chapter:

1. Agricultural use of land.
2. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards.
3. Land within flood plain areas as designated in the Federal Emergency Management Agency maps in effect at the time of development, except when associated with discharge sites related to open loop geothermal heating/cooling systems.
4. Areas deemed appropriate by the City Engineer.

#### **156.05 APPLICATION.**

1. The requirements of this chapter apply to all development within the City.

2. Storm water detention basins intended to serve single-family residential development shall be publicly owned and maintained (see Resolution 15436 and Resolution 17525), unless approved otherwise by the City Engineer.

3. Lots (other than single-family lots) with an overall area of one acre or more shall provide on-site storm water detention. Such lots with an overall area less than one acre and an impervious surface greater than 11,000 square feet (approximately ¼ acre) shall comply with one of the following, as approved by the City Engineer:

A. Privately owned, on-site detention basin.

B. Tributary to privately or publicly owned detention basin.

In some watersheds, on-site storm water detention may be required, at the discretion of the City Engineer, for said lots.

4. At the discretion of the City Engineer, if a detention basin serves other than single-family zoning districts and can provide storm water attenuation for a substantial drainage area, the facilities may be publicly owned and maintained.

**156.06 SITE PLAN SUBMITTAL.** A site plan containing information regarding storm water drainage facilities set forth in this chapter must be submitted and approved by the City Engineer before any person may:

1. Receive a building permit for new construction or relocation of a principal or accessory use or enlargement or extension of an existing use.

2. Reroute, deepen, narrow, enlarge, fill or in any way alter an existing storm water drainage system.

3. Pave a parking lot containing four or more parking spaces with hot mix asphalt (HMA) or portland cement concrete (PCC).

4. Install an open loop geothermal heating/cooling system.

**156.07 STORM WATER MANAGEMENT REQUIREMENTS.**

1. For purposes of obtaining approval of a Storm Water Management Plan, an Iowa Licensed Professional Engineer, certified Inspector of Sediment and Erosion Control, or Landscape Architect shall design storm water drainage facilities in conformance with SUDAS. Storm water drainage facilities shall be designed with appropriate BMP's such as detention and retention basins, grass swales, buffer strips, bio-retention and other similar types of infiltration basins and riparian areas, that will convey drainage through the property to one or more treatment areas such that no development shall cause downstream property owners, water courses, channels or conduits to receive storm water runoff from the proposed development site at a peak flow greater than that allowed by the standards in effect at the time of approval of the development.

*(Ord. 15-24 – Feb. 16 Supp.)*

2. In order to ensure that the storm water drainage facilities are constructed in accordance with the approved design, the property owner or applicant shall provide to the City an as-built plan detailing dimensions and elevations as well as certification that the approved facilities were installed and properly working. The as-built plan shall be



completed by an Iowa licensed Professional Engineer, Surveyor, or Landscape Architect and submitted to the City prior to the acceptance of any improvements or issuance of a Certificate of Occupancy. At the discretion of the City, a property owner or applicant may satisfy the SWMP requirements by ensuring the conveyance of storm water discharge from the property to a regional public detention facility.

3. The Storm Water Management Plan, including on-site storm water detention facilities, shall be reviewed for the purpose of completing review of plans by the City Engineer prior to issuance of foundation permits, or building permits for the site. The improvements shall be constructed prior to the issuance of final certificates of occupancy. The requirements of this subsection may be deferred at the discretion of the City Engineer.

4. For sites on which privately owned and maintained storm water detention and/or conveyance facilities are located, the property owner shall be responsible for the following:

- A. All future grading, repairs, and maintenance.
- B. Maintenance of the minimum storm water detention volume, as approved by the City Engineer.
- C. Maintenance of the detention basin control structure(s) and discharge pipe(s) to insure the maximum theoretical storm water release rate, as reviewed by the City Engineer, is not increased.

5. The property owner shall place no fill material, or erect any buildings, obstructions, or other improvements on the area reserved for storm water detention purposes, unless otherwise approved by the City Engineer.

6. The property owner shall, when required by the City Engineer, dedicate to the City, by instrument or final platting, any property on which public storm water detention basins will be located. Ingress-egress easements for maintenance of public facilities shall be provided prior to final site approval. Paved surface to basin is required if basin is not located adjacent to a public road.

7. All public storm sewers shall be dedicated to the City.

8. Upon determination that a site is not in compliance with the SWMP and/or DNR regulations, the City Engineer may issue an order to comply. The order shall describe the problem and specify a date whereby the work must be completed, and indicate the penalties to be assessed for further noncompliance.

9. Except as provided in this chapter, no person shall engage in construction of storm water management facilities, unless a Storm Water Management Plan has been reviewed and approved by the City Engineer.

10. Compliance with this chapter is achieved when:

- A. The site plan has been approved.
- B. The approved storm water drainage facilities have been implemented and are demonstrably in conformance with the approved site plan and Design Manual.

11. It is the intent of this section that review of the storm water drainage system be carried out simultaneously with the review of the request for a building permit. The site

plan required under this chapter may be submitted in a form which will satisfy the site plan requirements set forth in the Building Code and Zoning Ordinance.

12. Before starting on construction regulated by this chapter, the applicant shall comply with the requirements set forth in other applicable ordinances with respect to submission and approval of subdivision plats, plans of improvements, building permits, inspections, appeals and similar matters, as well as requirements of State statutes and the regulations of any Department of the State of Iowa.

13. At the direction of the City Council, during times of flooding or excessive storm water run-off, open loop geothermal heating/cooling system discharge may be required to be diverted or discontinued from storm sewer or surface water drainage systems.

14. At the direction of the City Council, open loop geothermal heating/cooling systems may be required to be modified to include a well re-injection system.

#### **156.08 WAIVER AND APPEAL.**

1. Higher Release Rate. The City Engineer may permit a higher storm water runoff release rate from a development than set forth in the Master Drainage Plan and/or Design Manual, provided the City Engineer determines that the proposed storm water runoff release rate:

- A. Will not adversely affect properties in the downstream portion of the drainage system.
- B. Will not adversely affect the drainage system or any watercourse.
- C. Will not adversely affect the environment.
- D. Will not be contrary to the goal and general objectives of this chapter and will not adversely affect the public health, safety, and welfare.

2. Waiver to City Engineer. An applicant may request a waiver from the requirements of this chapter and/or the Design Manual by submitting an application in writing to the City Engineer. This application shall identify the name of the developer and/or owner of the property, a description and drawing of the proposed development, the location of the proposed development and any other information requested by the City Engineer that is reasonably necessary to evaluate the proposed development. The City Engineer may grant a waiver if he/she determines that as a result of the waiver of the development:

- A. It is not likely to adversely affect other properties.
- B. It is not likely to adversely affect the drainage system or any watercourse.
- C. It is not likely to adversely affect the environment.
- D. It is not likely to be contrary to the goal and general objectives of this chapter and the public health, safety and welfare.
- E. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this chapter.
- F. The effect of the application of this chapter would be arbitrary and unreasonable in this specific case.



3. Appeals to Building Board of Appeals. Any person affected by a decision of the City Engineer given in connection with the administration or enforcement of this chapter may request and shall be granted a hearing on the matter before the Building Board of Appeals. All requests for such hearing shall be made in writing and shall contain the information set forth in subsection 2 of this section, plus such other information as may be required by the Building Board of Appeals. In addition, the Building Board of Appeals may request other information that is reasonably necessary to evaluate the request for appeal.

A. The Building Board of Appeals shall use the standards set forth in paragraphs A through F of subsection 2 of this section as criteria for evaluating appeals.

B. The applicant shall be notified in writing of the time and place of the meeting at least four (4) days prior to the meeting. At the meeting, the applicant and the City Engineer shall be given an opportunity to be heard and to show cause why any decision should be sustained, modified, withdrawn, or variance granted.

C. The Building Board of Appeals by a majority vote may sustain, modify, withdraw, or grant a waiver or variance on any decision of the City Engineer that is appealed.

D. The rules of procedure of the Building Board of Appeals shall govern the conduct of the meeting.

**156.09 EROSION CONTROL.** Storm water drainage facilities may not outlet onto adjacent property unless downstream land has adequate means to convey runoff and erosion control measures are taken to assure compliance with City and State erosion control regulations. Erosion resulting from such outlet may not exceed soil erosion limits established by State law.

**156.10 INSPECTION OF STORM WATER MANAGEMENT FEATURES.**

1. The City Engineer, or his authorized representatives, shall establish and maintain a storm water inspection schedule that includes but is not limited to:

A. Routine inspections.

B. Random inspections.

C. Inspections based upon public complaint.

D. Inspections based upon notice of possible violations.

E. Inspection of areas identified as having a higher than typical detention requirement for sediment or pollutant exposure, such as construction sites, detention and retention basins.

F. Inspections of businesses or industries of a type associated with discharges that begin to discharge above acceptable tolerance limits set by local, state or federal water or sediment quality standards, or the National Pollutant Discharge Elimination System (NPDES) Phase II storm water permit and the Clean Air Act.

G. Joint inspections with other agencies inspecting per environmental or safety regulations as deemed necessary.

2. Inspections may include, but are not limited to the following:
  - A. Evaluating the condition and current need for maintenance of storm water control features such as inlets, manholes, piping, detention and retention basins.
  - B. Sampling discharges, surface water, ground water, sediment material or standing water in drainage control facilities as deemed necessary.
  - C. Reviewing maintenance and repair records of storm water facilities.
  - D. Verification that storm water facilities approved during construction plan review, such as detention basins, retention basins, piping and inlets are present and in good condition.

#### **156.11 MAINTENANCE.**

1. **Owner Responsibility.** The owner shall be responsible for all storm water drainage facilities not officially dedicated and accepted by the City.
  - A. The City shall notify the owner of a storm water drainage facility of the existence of a maintenance problem when the City has received a verified complaint or a field inspection report.
  - B. If after notice and a reasonable time, the owner fails to properly maintain the storm water drainage facility, the City may institute legal action to abate or enjoin the violation. The City may also authorize City employees to enter the storm water drainage facility to make it fully operative pursuant to City and State statute. The property owner may bear the costs of such action.
2. **City Responsibility.** The City shall be responsible for maintenance of land and storm water drainage facilities dedicated to the City. The City may provide maintenance for storm water storage areas serving more than one lot which have not been dedicated to the City. Such maintenance shall be subject to negotiation with the owner.

#### **156.12 FINANCING.**

1. **Intent.** It is the intent of this section to achieve the objectives of this chapter by:
  - A. Assuring compliance with the Master Drainage Plan and Design Manual in terms of storm water runoff flow rates, thereby protecting downstream properties.
  - B. Promoting equity in terms of the financial responsibility of owners developing either upstream or downstream properties.
2. **Owner's Responsibilities.** The owner and/or developer shall be responsible for:
  - A. Installation of all storm water drainage facilities.
  - B. Purchase of all storm sewer pipe and their construction materials.
  - C. Design of all storm water drainage facilities in accordance with the Master Drainage Plan and Design Manual.
  - D. Construction of all storm water storage areas, channels, swales, culverts, ditches, streets, and pumping stations and similar facilities.

- E. Payment of drainage fee at time of final plat.
  - F. Acquisition of all applicable permits and submittal of said permits to the City for review.
  - G. Reconstruction of all downstream storm water drainage facilities determined to have inadequate capacity as affected by increased water flow due to open loop geothermal heating/cooling systems discharge.
  - H. Payment of application review fees set by City Council resolution at time of open loop geothermal heating/cooling system project site plan submittal.
3. City's Responsibilities. The City shall be responsible for:
- A. Payment to the owner or developer of the difference in actual purchase price between all pipes larger than 36 inches in size to be installed in a development and the cost of a 36-inch pipe of the same material. The cost of installing the pipe is exclusively the responsibility of the owner or developer. Notwithstanding subsection 5 of this section, the owner shall be completely responsible for materials and construction of bridges and culverts on streets not designated in the transportation plan, unless the Council directly requires the extension on a non-major street across a drainage way necessitating the installation of a bridge or culvert, in which case the City financial responsibility shall be for the additional costs associated with the bridge or culvert but only to the extent that the costs exceed the costs of normal construction that would normally be borne by the owner.
  - B. Purchase of land designated for approved City-owned storm water storage areas. The land purchase price shall be established by independent appraisal of the fair market value of the subject parcel. The appraisal shall be obtained by the City and the cost of this appraisal shall be borne by the City.
    - (1) In the event of a dispute between the owner and the City as to the value of the property, a second independent appraisal shall be obtained. Both the owner and the City shall have the opportunity to present evidence of this appraisal. The decision of this appraiser shall be considered the final administrative act within the City. The cost of this appraisal shall be borne equally by the owner and the City.
    - (2) To qualify for City acquisition, storm water storage areas shall:
      - (a) Be part of an approved subdivision plat inside the corporate limits of the City.
      - (b) Serve more than one lot.
      - (c) Be dedicated to the City.
      - (d) Not be hard-surfaced.
      - (e) Meet the design standards of the City.
      - (f) Be inspected by the City.
4. Drainage Fee. The owner of all new subdivision final plats and all new planned development final development plans shall pay a storm water management fee prior to

Council consideration of such final plat or final development plan. Such fee shall be established by resolution of the Council.

A. Such money shall be placed in a special fund to be used for the purpose of financing the City's responsibilities set forth in subsection 3 of this section.

B. Single-family residential subdivisions containing two lots or less are exempt from the drainage fee provided the lots created by such subdivision are one acre or more in size.

5. Shared Responsibilities. The owner and the City shall share financial responsibility in the following instances:

A. Bridges and Culverts. The City shall be responsible for purchasing the materials for bridges and culverts needed as part of major streets as designated in the Transportation Plan. The owner shall be responsible for construction and installation of bridges and culverts. The owner shall be completely responsible for bridges and culverts on streets not designated in the Transportation Plan.

B. Channels. The use of open channels with or without improvements is available to developers. Cost participation by the City is subject to negotiation between the developer and the City at the time of platting.

6. *(Repealed by Ord. 11-04 – May 13 Supp.)*

#### **156.13 SUMP PUMP CONNECTIONS.**

1. New Construction. All new construction of a principal use on a lot shall provide for connection of sump water discharge to a dedicated City drain tile or storm sewer whenever such drain tile or storm sewer is located immediately adjacent to such lot or located within twenty-five (25) feet thereof in the public right-of-way or a drainage easement.

2. Existing Development. Upon determination that a nuisance exists, the City Engineer is authorized to require a property owner to connect a sump water discharge hose or other device for storm water runoff to a dedicated City drain tile or storm sewer system, or surface drainage way or slope, provided such drain tile or storm sewer is located immediately adjacent to or located within twenty-five (25) thereof, in the public right-of-way or a drainage easement, of the property causing the nuisance.

#### **156.14 SAVINGS CLAUSE.**

1. This chapter does not imply that site development will be free from storm water damage, nor shall it create liability on the part of the City for damages caused by unanticipated storms or storm sequences.

2. It is not intended that this chapter repeal, abrogate, or impair any statutory provision, administrative regulation, common law right, existing easement, express or implied, covenant or deed restriction controlling storm water. When this chapter imposes greater restrictions, however, the provisions of this chapter shall prevail.

3. Responsibility. The failure of City officials to observe or foresee hazardous or unsightly conditions, or impose other or additional conditions or requirements, or to deny

or revoke permits or approvals, or to stop work in violation of this chapter shall not relieve the property owners of the consequences of their actions or inactions or result in the City, its officers or agents being liable therefore or on account thereof. Notwithstanding any provisions of this chapter, every applicant bears final and complete responsibility for compliance with the NPDES General Permit #2 and any other requirements of state or federal law or administrative rule.

**156.15 PENALTIES.** Any person who engages in development of a site within the area of jurisdiction of this chapter before meeting the requirements of this chapter shall be subject to one or more of the following:

1. The standard penalty as provided in Section 1.06 of this Code of Ordinances or may be cited for a municipal infraction under Chapter 4 of this Code of Ordinances or may be subject to any other remedy allowed by law.
2. No foundation permits or building permits shall be issued for the property in question until the violations are corrected.
3. No permanent certificates of occupancy shall be issued for property in question until the violations are corrected. Any existing certificate of occupancy may be rescinded.
4. In the interpretation and application of this chapter, the provisions expressed herein shall be held to be the minimum requirements and shall be liberally constructed in favor of the City consistent with the purposes and guiding principles of this chapter.
  - A. Whenever the City Engineer finds such a nuisance exists, the City Engineer shall cause notice to be served on the owner of the property causing the nuisance in the same manner as provided in Chapter 50 of this Code of Ordinances.
  - B. In the event the person neglects or fails to abate the nuisance as directed by the City Engineer, the City may cause the nuisance to be abated as provided in Chapter 50. The City Engineer may also choose to institute proceedings under civil enforcement as provided in this Code of Ordinances or municipal infractions as provided in Chapter 4 of this Code of Ordinances.
  - C. Any person ordered to abate a nuisance may have a hearing and appeal as provided under Chapter 50 of this Code of Ordinances.

*(Ch. 156 - Ord. 10-30 – Nov. 10 Supp.)*

## **CHAPTER 91**

# **ILLICIT DISCHARGE TO STORM SEWER SYSTEM**

**91.01 Purpose**

**91.02 Illicit Discharges Prohibited**

**91.03 Illicit Connections Prohibited**

**91.04 Industrial Discharges**

**91.05 Illicit Discharge Detection and Reporting; Cost Recovery**

**91.06 Suspension of Access to the City's Storm Sewer System**

**91.07 Watercourse Protection**

**91.08 Enforcement**

**91.09 Appeal**

### **91.01 PURPOSE.**

1. The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program (program) administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit). The City of Marion, Iowa, is subject to the program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the City Clerk and is available for public inspection during regular office hours.
2. As a condition of the City's MS4 Permit, the City is obliged to adopt and enforce an Illicit Discharge To Storm Sewer System Ordinance.
3. No state or federal funds have been made available to assist the City in administering and enforcing the program. Accordingly, the City shall fund its operations under this chapter entirely by charges imposed on the owners of properties which are made subject to the program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.
4. Terms used in this chapter shall have the meanings specified in the program.

### **91.02 ILLICIT DISCHARGES PROHIBITED.**

1. For purposes of this chapter, a "responsible party" is one or more persons that control or are in possession of or own property. Responsible parties shall be jointly and severally responsible for compliance with this chapter and jointly and severally liable for any illicit discharge from the property controlled, possessed or owned. For purposes of this chapter, "property" includes, but is not limited to, real estate, fixtures, facilities and premises of any kind located upon, under or above the real estate.
2. Nothing in this chapter shall be deemed to relieve a responsible party subject to an IDNR-issued industrial discharge permit or any other federal, state or



City permit, statute, ordinance or rule from any obligation imposed by such permit, statute, ordinance or rule if any such obligation is greater than any obligation imposed by this chapter.

3. Any discharge into the City's storm sewer system prohibited by the City's MS4 Permit, the terms of which are hereby incorporated by reference, shall be deemed an illicit discharge in violation of this chapter. The term "illicit discharge" is defined in EPA's Phase II storm water regulations as "any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges pursuant to an NPDES permit and discharges resulting from fire-fighting activities".

4. Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City's Construction Site Erosion and Sediment Control (COSESCO) ordinance or sediment pollution entering a municipal storm sewer that causes a water quality violation as determined by the DNR shall be deemed an illicit discharge in violation of this chapter.

#### **91.03 ILLICIT CONNECTIONS PROHIBITED.**

1. For purposes of this chapter, an "illicit connection" to the City's storm sewer system is any physical connection or other topographical or other condition, natural or artificial, which is not specifically authorized by ordinance or written rule of the City, which causes or facilitates, directly or indirectly, an illicit discharge.

2. The construction, use, maintenance or continued existence of any illicit connection shall constitute a violation of this chapter.

3. 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.

#### **91.04 INDUSTRIAL DISCHARGES.**

1. Any responsible party subject to an industrial NPDES discharge permit issued by the IDNR shall comply with all provisions of such permit.

2. Proof of compliance with said permit may be required in a form acceptable to the enforcement officer, prior to discharges to the storm sewer system, authorized by said permit.

#### **91.05 ILLICIT DISCHARGE DETECTION AND REPORTING; COST RECOVERY.**

1. All detection activities permitted under this chapter shall be conducted by the City Engineer, hereinbefore and after referred to as the "enforcement officer."



2. The City shall not be responsible for the direct or indirect consequences to persons or property of an illicit discharge, or circumstances which may cause an illicit discharge, undetected by the City.

3. Every responsible party has an absolute duty to monitor conditions on property owned or controlled by them, to prevent all illicit discharges, and to report to the enforcement officer illicit discharges which the responsible party knows or should have known to have occurred. Failure to comply with any provision of this chapter is a violation of this chapter.

A. Notwithstanding other requirements of law, as soon as any responsible party has information of any known or suspected illicit discharge, the responsible party shall immediately take all necessary steps to ensure the discovery, containment, and cleanup of such discharge at the responsible party's sole cost.

B. If the illicit discharge consists of hazardous materials, the responsible party shall also immediately notify emergency response agencies of the occurrence via emergency dispatch services.

C. If the illicit discharge 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.

D. A report of an illicit discharge shall be made in person or by phone, facsimile, or email to the enforcement officer immediately but no later than the end of the first business day after the day of discovery of the illicit discharge; notifications in person or by phone shall be confirmed by written notice addressed and mailed or emailed to the enforcement officer within twenty-four hours of the personal or phone notice.

4. Any person or entity shall also report to the City any illicit discharge or circumstances which such person or entity reasonably believes pose a risk of an illicit discharge.

5. Upon receiving a report pursuant to the previous subsections, or otherwise coming into possession of information indicating an actual or imminent illicit discharge, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide to the responsible party, and any third party reporter, a written report of the conditions which may cause or which have already caused an illicit discharge. The responsible party shall immediately commence corrective action or remediation and shall complete such corrective action or remediation within twenty-one (21) days after discovery. If it is not possible to eliminate an illicit discharge within 21 days after discovery, the responsible party shall submit to the City the reasons why the discharge cannot be eliminated within 21 days of discovery and a plan which contains a timeline of

activities which will result in the elimination of the discharge. This statement and plan shall be submitted within 21 days of discovery of the illicit discharge. If the City and DNR do not approve the plan, the responsible party will then be required to eliminate the discharge no later than a date specified by the City and DNR.

6. The enforcement officer shall be permitted to enter and inspect property subject to regulation under this section as often as is necessary to determine compliance with this section. If a responsible party has security measures that require identification and clearance before entry to its property or premises, the responsible party shall make the necessary arrangements to allow access by the enforcement officer. By way of specification but not limitation:

A. A responsible party shall allow the enforcement officer ready access to all parts of the property for purposes of inspection, sampling, examination and copying of records related to a suspected, actual, or imminent illicit discharge, and for the performance of any additional duties as defined by state and federal law.

B. The enforcement officer shall have the right to set up on any property such devices as are necessary in the opinion of the enforcement officer to conduct monitoring and/or sampling related to a suspected, actual or imminent illicit discharge.

C. The enforcement officer shall have the right to require any responsible party at responsible party's sole expense to install monitoring equipment and deliver monitoring data or reports to the enforcement officer as the enforcement officer directs. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the responsible party at responsible party's sole expense. All devices shall be calibrated to ensure their accuracy.

D. Any temporary or permanent obstruction to safe and easy access to property to be inspected and/or sampled shall be promptly removed by the responsible party at the written or oral order of the enforcement officer and shall not be replaced. The costs of clearing such access shall be borne by the responsible party.

E. An unreasonable delay in allowing the enforcement officer access to a property is a violation of this chapter.

F. If the enforcement officer has been refused access to any part of the property from which an illicit connection and/or illicit discharge to a municipal storm sewer is occurring, suspected or imminent, and is able to demonstrate probable cause or believes that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public

health, safety, and welfare of the community, then the enforcement officer may seek issuance of a search warrant from any court of competent jurisdiction.

7. If it is determined that an illicit discharge is imminent or has occurred, the actual administrative costs incurred by the City in the enforcement of this chapter shall be recovered from the responsible party. The enforcement officer shall submit an invoice to the responsible party reflecting the actual costs, wages, and expenses incurred by the City for the enforcement activities undertaken. Failure to pay charges invoiced under this chapter within thirty days of billing shall constitute a violation of this chapter.

#### **91.06 SUSPENSION OF ACCESS TO THE CITY'S STORM SEWER SYSTEM.**

1. **Emergency Suspension.** The enforcement officer may, without prior notice, suspend storm sewer system access to a property when such emergency suspension is necessary to stop an ongoing or imminent illicit discharge. If the responsible party fails to immediately comply with an emergency suspension order, the enforcement officer shall take such steps as deemed necessary to prevent or minimize the illicit discharge. All costs of such action shall be recovered from the responsible party for the property identified as the source of the illicit discharge.

2. **Non-Emergency Suspension.** If the enforcement officer detects or is informed of circumstances which could cause an illicit discharge but such illicit discharge is not ongoing or imminent, and if the suspension of storm sewer system access would reasonably be expected to prevent or reduce the potential illicit discharge, the enforcement officer shall notify the responsible party of the proposed suspension of storm sewer system access and the time and date of such suspension. Notice to one responsible party for the property shall be sufficient notice to all. Remediation of the circumstances shall avoid a violation of this chapter provided that no illicit discharge occurs. In the alternative, the responsible party may request a meeting with the enforcement officer for the purpose of presenting information which the responsible party believes will show that remediation is unnecessary, and if the enforcement officer finds such information is satisfactory the enforcement officer may rescind or modify the notice of suspension. If the enforcement officer finds such information unsatisfactory the enforcement officer shall issue a final written order of suspension including the date and time of suspension and such order may be appealed as provided hereinafter. Any physical action to reinstate storm sewer system access to property subject to such order, prior to obtaining a court order of relief, shall be deemed a violation of this chapter. An order of suspension shall not preclude charging the responsible party with a municipal infraction as provided hereinafter or taking any other enforcement action permitted by statute or ordinance.

**91.07 WATERCOURSE PROTECTION.** 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 below the elevation of the 100 year flood free of trash, debris, grass clippings or other organic wastes and other obstacles that would pollute, contaminate, or significantly alter the quality of water flowing 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.

**91.08 ENFORCEMENT.**

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.
2. Violation of any provision of this chapter may also be enforced as a municipal infraction pursuant to the City's municipal infraction chapter.
3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

**91.09 APPEAL.**

1. Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City Council pursuant to the following rules:
  - A. The appeal must be filed in writing with the City Clerk within five business days of the decision or enforcement action.
  - B. The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
  - C. The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.
  - D. The City Clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter

21, Iowa Code, of the date, time and place for the regular or special meeting of the City Council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four nor more than twenty days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the City Attorney or by an attorney designated by the City Council at City expense.

2. The decision of the City Council shall be rendered in writing and may be appealed to the Iowa District Court.

*(Ch. 91 - Ord. 05-27 – Nov. 05 Supp.)*