

**BUSINESS OF THE CITY COUNCIL
WINDSOR HEIGHTS, IOWA
AGENDA STATEMENT**

Item No. 8
For Meeting of 10/15/07

ITEM TITLE: Phase II Stormwater Ordinances – Illicit Discharge – final reading

CONTACT PERSON(S): Marketa George Oliver, City Administrator
John Wiedman, Public Works


SUMMARY EXPLANATION

The 1987 amendments to the Clean Water Act required the US EPA to establish the National Pollutant Discharge Elimination System (“NPDES”) permitting program. In December 1999, the EPA published Phase II of the NPDES program titled “Storm Water Phase II Final Rule.” Phase II expands the program started in Phase I by automatically requiring NPDES storm water permits for US Census defined “urbanized areas”. All areas identified in the 1990 US census and the 2000 census maps as “urbanized areas” are required to have a Phase II permit.

The Phase II regulations mandate six minimum control measures for inclusion in the NPDES permit. These measures are:

- Public Education and Outreach,
- Public Involvement/Participation,
- Illicit Discharge Detection and Elimination,
- Construction Site Runoff Control,
- Post-Construction Stormwater Management in New and Redevelopment, and
- Pollution Prevention/Good Housekeeping for Municipal Operations.

Ordinance 07-05 addresses the requirements of the pollution prevention and good housekeeping portion of Phase II by prohibiting illicit discharge of prohibited materials, such as erosion sediment, in the City’s stormwater system.

_____ Resolution _____ Ordinance _____ Contract _____ Other (Specify) _____
Funding Source _____
APPROVED FOR SUBMITTAL _____ <div style="text-align: center;"> _____ City Administrator</div>

STAFF RECOMMENDATION: Pass the ordinance on final reading on a roll call vote.

COUNCIL ACTION:

ORDINANCE NO. 07-05

ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF Windsor Heights,
BY ADDING CHAPTER 63, "ILLCIT DISCHARGE TO STORM SEWER SYSTEM"

Section 1. THE CODE OF ORDINANCES, CITY OF _____ Windsor Heights, is hereby amended to add CHAPTER 63 "ILLCIT DISCHARGE TO STORM SEWER SYSTEM," in the form attached hereto.

Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall be effective from and after the final passage, approval and publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2007.

Jerry Sullivan, Mayor

(SEAL)

ATTEST:

Marketa George Oliver, City Administrator/Clerk

APPROVED AS TO FORM:

City Attorney

I, _____, City Clerk of the City of _____
_____, Iowa, do hereby certify that the foregoing
ORDINANCE was passed and approved by the City Council of the City of _____
_____ Iowa, on the _____ day of _____,
20____, and was published in the
, a newspaper of general circulation in the said City of
, on the _____ day of
_____, 20_____.

Dated this _____ day of _____, 20_____.

City Clerk

SECTION 1. FINDINGS:

- 1.1. 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 Windsor Heights 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.
- 1.2. 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.
- 1.3. 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 ordinance 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.
- 1.4. Terms used in this ordinance shall have the meanings specified in the Program.

SECTION 2. ILLICIT DISCHARGES PROHIBITED

- 2.1 For purposes of this ordinance, 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 ordinance and jointly and severally liable for any illicit discharge from the property controlled, possessed or owned. For purposes of this ordinance, "property" includes but is not limited to real estate, fixtures, facilities and premises of any kind located upon, under or above the real estate.
- 2.2 Nothing in this ordinance 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 ordinance.
- 2.3 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 ordinance.
- 2.4 Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City's 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 ordinance.

SECTION 3. ILLICIT CONNECTIONS PROHIBITED

- 3.1 For purposes of this ordinance, 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.
- 3.2 The construction, use, maintenance or continued existence of any illicit connection shall constitute a violation of this ordinance.
- 3.3 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.

SECTION 4. INDUSTRIAL DISCHARGES

- 4.1 Any responsible party subject an industrial NPDES discharge permit issued by the IDNR shall comply with all provisions of such permit.
- 4.2 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.

SECTION 5. ILLICIT DISCHARGE DETECTION AND REPORTING; COST RECOVERY

- 5.1 All detection activities permitted under this ordinance shall be conducted by the city Public Works Director, City Engineer, Building Inspector; a subcontractor credentialed in a manner satisfactory to the city or other appropriate designee, hereinafter referred to as the “enforcement officer.”
- 5.2 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.
- 5.3 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 ordinance is a violation of this ordinance
 - 5.3.1 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.
 - 5.3.2 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.
 - 5.3.3 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.

- 5.3.4 A report of an illicit discharge shall be made in person or by phone or facsimile or email to the enforcement officer immediately but in any event within twenty-four (24) hours 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 (24) hours of the personal or phone notice.
- 5.4 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.
- 5.5 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-four (24) hours.
- 5.6 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:
 - 5.6.1 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.
 - 5.6.2 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.
 - 5.6.3 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.
 - 5.6.4 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.

- 5.6.5 An unreasonable delay in allowing the enforcement officer access to a property is a violation of this ordinance.
- 5.6.6 If the enforcement officer has been refused access to any part of the property from an illicit connection and/or illicit discharge to a municipal storm sewer is occurring, suspected or imminent, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, 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 ordinance 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.
- 5.7 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 ordinance shall be recovered from the responsible party. The enforcement officer shall submit an invoice to the responsible party reflecting the actual costs and wages and expenses incurred by the city for the enforcement activities undertaken. Failure to pay charges invoiced under this ordinance within thirty (30) days of billing shall constitute a violation of this ordinance.

SECTION 6. SUSPENSION OF ACCESS TO THE CITY'S STORM SEWER SYSTEM

- 6.1 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.
- 6.2 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 ordinance 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 ordinance. 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.

SECTION 7 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.

SECTION 8. ENFORCEMENT

- 8.1 Violation of any provision of this ordinance 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 ordinance.
- 8.2 Violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of §364.22, pursuant to the City's municipal infraction ordinance.
- 8.3 Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

SECTION 9. APPEAL

- 9.1 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:
 - 9.1.1 The appeal must be filed in writing with the city clerk within five (5) business days of the decision or enforcement action.
 - 9.1.2 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.
 - 9.1.3 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.

- 9.1.4 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 (4) nor more than twenty (20) 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.
- 9.2 The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.