

## **ILLICIT DISCHARGE TO STORM SEWER SYSTEM**

### **§406.01 Purpose.**

- A. The purpose of this chapter of the Code of Ordinances is to provide for the health, safety, and general welfare of the citizens of Waukee through the regulation of non-stormwater discharges to the City of Waukee separate storm sewer system to the maximum extent practicable, as required by Federal law. This chapter establishes methods for controlling the introduction of pollutants into the City of Waukee separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

### **§406.02 Definitions.**

- A. The following terms are defined for use in this chapter, unless the context specifically indicates otherwise:
1. “Hazardous Materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
  2. “Illegal Connection” means either of the following:
    - (a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
    - (b) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
  3. “Illicit Discharge” means any direct or indirect non-stormwater discharge to the City of Waukee separate storm sewer system, except as exempted in 406.03 of this chapter.
  4. “Industrial Discharge” means discharges subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
  5. “Municipal Separate Storm Sewer System (MS4)” means any facility designed or used for collecting and/or conveying stormwater, including inlets, catch basins,

piped storm drains, pumping facilities, structural stormwater controls, or other drainage structures which are owned or maintained by the City of Waukee.

6. “National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit” means a permit issued by Iowa Department of Natural Resources (IDNR) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
7. “Non-Stormwater Discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.
8. “Pollutant” means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects or accumulations, so that same may cause or contribute to pollution; floatables; hazardous substances and wastes; sewage; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
9. “Pollution” means the contamination or other alteration of any water’s physical, chemical or biological properties, including change in color, turbidity, or odor of such waters or the discharge of any liquid, gaseous, solid, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare.
10. “Premises” mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
11. “Responsible Party” For purposes of this ordinance, 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. The definition of Responsible Party does not include the City when an illicit discharge is caused by a person on a public street or on public property.
12. “Stormwater Runoff” or “Stormwater” means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
13. “Structural Stormwater Control” means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

§406.03      **Allowable Non-Storm Water.**

1. Discharges from fire fighting activities, fire hydrant flushing, potable water sources, waterline flushing, uncontaminated groundwater, foundation or footing drains, springs, riparian habitats, wetlands, irrigation water, air conditioning condensate, exterior building wash water when no detergents or other surfactants are used and pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred and when no detergents or other surfactants are used.

§406.04      **Illicit Discharges and Illegal Connections Prohibited.**

1. Any discharge into the City's storm sewer system prohibited by the City's NPDES Permit, the terms of which are hereby incorporated by reference, shall be deemed an Illicit Discharge in violation of this chapter.
2. The construction, use, maintenance or continued existence of any Illegal Connection shall constitute a violation of this chapter. This prohibition expressly includes, without limitation, Illegal Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

§406.05      **Industrial Discharges.** Any Responsible Party subject to an industrial NPDES discharge permit issued by the IDNR shall comply with all provisions of such permit.

§406.06      **Watercourse Protection.** Every Responsible Party owning property through which a watercourse passes, or such Responsible Party'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.

§406.07      **Illicit Discharge or Illegal Connection Detection, Reporting and Inspection.**

1. All detection activities permitted under this ordinance shall be conducted by the Public Works Director, or his or her designee, hereinafter referred to as the "Inspector." The "inspector" may undertake to conduct inspections in and through cooperative efforts with Federal, State, County or other Municipal Agencies
2. The City shall not be responsible for any direct or indirect consequences affecting Responsible Party or property as a result of an Illicit Discharge, or circumstances which may cause an Illicit discharge, whether detected or 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 City any Illicit Discharges, which the Responsible Party knows or should have known to occur. Failure to comply with any provision of this chapter is a violation of this chapter.

4. 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. 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.
6. 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.
7. A report of an Illicit Discharge shall be made in person or by phone or facsimile or email to the Inspector 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 Inspector within twenty-four (24) hours of the personal or phone notice.
8. Any Responsible Party shall also report to the City any circumstances which such person or entity reasonably believes pose a risk of an Illicit Discharge.
9. Upon receiving a report pursuant to the previous sections or otherwise coming into possession of information indicating an actual or imminent Illicit Discharge or an Illegal Connection, the Inspector shall conduct an inspection of the site as soon as reasonably possible and, if an Illicit Discharge or Illegal Connection is found, the Inspector shall thereafter shall provide to the Responsible Party(s) for such Premises a written notice to abate conditions which have already caused or may cause an Illicit Discharge or the presence of an Illegal Connection. The Responsible Parties shall immediately commence corrective action or remediation and shall complete such corrective action or remediation within the time frame specified within the abatement notice.
10. The Inspector shall be permitted to enter and inspect any property subject to regulation under this section as often as is necessary to determine compliance with this section. If a Responsible Party owning, controlling or possessing a property has security measures that require identification and clearance before entry to its property, such Responsible Party shall make the necessary arrangements to allow access by the Inspector. By way of specification but not limitation:
  - (a) A Responsible Party shall allow the Inspector 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 Inspector shall have the right to set up on any property such devices as are necessary in the opinion of the Inspector to conduct monitoring and/or sampling related to a suspected, actual or imminent Illicit Discharge.
- (c) Any temporary or permanent obstruction that obstructs the 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 Inspector and shall not be replaced. The costs of clearing such access shall be borne by the Responsible Party.
- (d) An unreasonable delay in allowing the Inspector access to a property is a violation of this chapter.
- (e) If the Inspector has been refused access to any part of the property from which an Illegal Connection and/or Illicit Discharge is occurring, suspected or imminent, and is able to demonstrate probable cause to believe 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 to protect the overall public health, safety, and welfare of the community, then the Inspector may institute other proceedings as are deemed appropriate to compel compliance with the provisions of this chapter.

**§406.08 Abatement of Illicit Discharge or Illicit Connection**

- 1. Contents. The notice to abate shall contain:
  - (a) Description of Illicit Discharge or Illegal Connection. A description of what constitutes the Illicit Discharge or Illegal Connection.
  - (b) Location of Illicit Discharge or Illegal Connection. The location of the Illicit Discharge or Illegal Connection.
  - (c) Acts Necessary to Abate. A statement of the act or acts necessary to abate the Illicit Discharge or Illegal Connection.
  - (d) Reasonable Time. A reasonable time within which to complete the abatement.

- (e) Payment of City's Costs. A statement that if the Illicit Discharge or Illegal Connection is not abated as directed and no request for hearing is made within the time prescribed, the City will abate it and invoice the costs to such Responsible Party.
- 2. Method of Service of Notice to Abate. The notice shall be sent by certified and ordinary mail to the property owner and/or other responsible party addressed to the property owner at the address identified on the Property owner's tax statement as reported by the County Auditor. Other Responsible party(ies) shall be notified by addressing said notice to their last known address. The notice shall be deemed delivered upon depositing the same in a mail receptacle of the United States Postal Service.
- 3. Request For Hearing. Any Responsible Party ordered to abate an Illicit Discharge or Illegal Connection may have a hearing with the Council as to whether an Illicit Discharge or Illegal Connection exists. A request for a hearing must be made in writing and delivered to the City Clerk within the time stated in the notice, or it will be conclusively presumed that an Illicit Discharge or Illegal Connection exists and it must be abated as ordered. The hearing will be before the Council at a time and place fixed by the Council. The findings of the Council shall be conclusive and, if an Illicit Discharge or Illegal Connection is found to exist, it shall be ordered abated within a reasonable time under the circumstances.
- 4. Failure to Abate. Any Responsible Party causing or maintaining an Illicit Discharge or Illegal Connection who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this Code of Ordinances.
- 5. Abatement By City. If the Responsible Party notified to abate an Illicit Discharge or Illegal Connection neglects or fails to abate as directed, the City may perform the required action to abate, keeping an accurate account of the expense incurred. The itemized expense account shall be filed with the Clerk who shall pay such expenses on behalf of the City.
- 6. Collection Of Costs. 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 Inspector shall submit an invoice to the Responsible Party reflecting the actual costs and wages and all other expenses incurred by the City for the enforcement activities undertaken. Failure to pay charges invoiced under this chapter within thirty (30) days of billing shall constitute a violation of this chapter.
- 7. Abatement In Emergency. If it is determined that an emergency exists by reason of the continuing maintenance of the Illicit Discharge or Illegal Connection, the City may perform any action which may be required under this chapter without prior notice. The City shall bill the costs as provided in Section 6.

8. Abatement on a Public Street or on Public Property. The person causing an Illicit Discharge on a public street or on public property shall be responsible for abatement, as directed by the City, or shall pay all costs of abatement performed by the City. The City shall bill any costs incurred as provided in Section 6. In addition to paying the costs of abatement, any person causing an illicit discharge on a public street or on public property shall be subject to a civil penalty and/or criminal fine in accordance with this chapter.

§406.09 **Penalty.** Unless another penalty is expressly provided by this chapter for any particular provision or section, any person(s) violating any provision of this chapter or any rule or regulation adopted herein by reference shall, in addition to being a criminal violation (Simple Misdemeanor) carrying a fine of up to \$500.00 and/or 30 days in jail, also constitute a municipal Infraction be subject to a civil penalty of up to \$500.00, in addition to the other remedies available pursuant to 364.22 Code of Iowa (2005) and these Ordinances. Each day that a violation occurs and/or exists constitutes a separate offense.

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