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ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HIAWATHA, IOWA, 1996, BY AMENDING CHAPTER 102 ILLICIT DISCHARGE TO STORM SEWER SYSTEM §102.05 ILLICIT DISCHARGE DETECTION AND REPORTING, COST RECOVERY, §102.06 SUSPENSION OF ACCESS TO THE CITY'S STORM SEWER SYSTEM, AND §102.09 APPEAL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA:

SECTION 1. Chapter 102 Illicit Discharge to Storm Sewer System, Section 102.05 Illicit Discharge Detection and Reporting, Cost Recovery, Section 102.06 Suspension of Access to the City's Storm Sewer System, and Section 102.09 Appeal of the Code of Ordinances of the City of Hiawatha, Iowa, 1996, is hereby amended and adopted as following:

102.05 ILLICIT DISCHARGE DETECTION AND REPORTING, COST RECOVERY.

1. All detection activities permitted under this chapter shall be conducted by the ~~City Building Department and/or the Streets Department~~City of Hiawatha or designated department, hereinbefore and after referred to as the "enforcement ~~officer~~agency."

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~~ agency illicit discharges which the responsible party knows or should have known 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 reoccurrence. 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 or facsimile or email to the enforcement ~~officer~~ agency 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 (24) 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 and thereafter shall provide to the responsible party 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 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 Department of Natural Resources 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 or Department of Natural Resources.

6. The enforcement ~~officer~~ agency 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~~ agency 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~~ agency 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~~ agency 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~~ agency 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~~ agency 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 property is a violation of this chapter.

F. If the enforcement ~~officer~~ agency 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 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 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~~ agency 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 (30) days of billing shall constitute a violation of this chapter.

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

1. Emergency Suspension. The enforcement ~~officer~~ agency 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~~ agency 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~~ agency 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.

102.09 APPEAL. Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the City ~~Administrator~~ Council pursuant to the following rules:

SECTION 2. 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 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this 17th day of May, 2017.

_____
Bill Bennett, Mayor

ATTEST:

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Kari Graber, Deputy Clerk

I, Kari Graber, City Clerk of the City of Hiawatha, Iowa, do hereby certify that the foregoing ORDINANCE was PASSED and APPROVED by the City Council of the City of Hiawatha, Iowa, on the 17th day of May, 2017, and was posted as Ordinance No. ____ on the _____ day of May, 2017.

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Kari Graber, Deputy Clerk