

ORDINANCE NO. 491

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF
THE CITY OF SERGEANT BLUFF, IOWA, BY ADDING A NEW
CHAPTER 101 REGULATING ILLICIT DISCHARGE
TO STORM SEWER SYSTEM

BE IT ENACTED by the City Council of the City of Sergeant Bluff, Iowa:

SECTION 1. NEW CHAPTER. The Code of Ordinances of the City of Sergeant Bluff, Iowa (2003), is amended by adding a new chapter, numbered 101, entitled ILLICIT DISCHARGE TO STORM SEWER SYSTEM, which is hereby adopted to read as follows:

CHAPTER 101

ILLICIT DISCHARGE TO STORM SEWER SYSTEM

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101.01 PURPOSE AND FINDINGS. The purpose of this chapter is to provide for the health, safety and general welfare of the citizens of Sergeant Bluff through the regulation of non-stormwater discharges to the 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 Sergeant Bluff's storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. It is further noted that:

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 Sergeant Bluff 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. Unless otherwise defined in this chapter, terms used shall have the meanings specified in the Program.

101.02 DEFINITIONS. For use in this chapter, unless the context specifically indicates otherwise, the following terms are defined:

1. "Discharge" means the direct or indirect non-stormwater release of water and any elements, compounds and particles contained within or upon, from property owned or controlled by a responsible party to the City of Sergeant Bluff's storm sewer system.

2. "Illicit connection" to the City's storm sewer system means 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. "Illicit discharge" means 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, except as exempted by subsection 101.03(4) of this chapter.

4. "Industrial discharge" means discharges subject to NPDES Industrial Permits as defined in 40 C.F.R. Section 122.26(b)(14).

5. "Property" includes but is not limited to real estate, fixtures, facilities and premises of any kind located upon, under or above the real estate.

6. “Responsible Party” means 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. A responsible party does not include the City when an illicit discharge is caused by a person on a public street or on public property.

101.03 ILLICIT DISCHARGES PROHIBITED.

1. It shall be unlawful for a responsible party to allow or cause an illicit discharge from any property it controls, possesses or owns.

2. It shall be unlawful for a responsible party subject to an IDNR-issued industrial discharge permit or any other federal, state or city permit, statute, ordinance or rule to violate or fail to comply with any obligation imposed by such permit, statute, ordinance or rule if any such obligation is greater than any obligation imposed by this chapter.

3. Sediment pollution originating from excessive erosion rates on a construction site not otherwise subject to the City’s Erosion and Sediment Control ordinance (Chapter 152) 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.

4. The following discharges are exempt from the requirements of this chapter and it shall not be unlawful to discharge non-storm water from: fire fighting activities, fire hydrant flushing, potable water sources, waterline flushing, uncontaminated groundwater, foundation or footing drains, springs, riparian habitats, wetlands, irrigation systems, air conditioning condensate, exterior building wash when no detergents or other surfactants are used, and pavement wash where spills or leaks of toxic or hazardous materials have not occurred and when no detergents or other surfactants are used.

101.04 ILLICIT CONNECTIONS PROHIBITED. It shall be unlawful to construct, use, maintain or continue the existence of any illicit connection. 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.

101.05 INDUSTRIAL DISCHARGES. Any responsible party subject an industrial NPDES discharge permit issued by the IDNR shall comply with all

provisions of such permit. 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.

101.06 ILLICIT DISCHARGE DETECTION AND REPORTING

1. All detection activities permitted under this ordinance shall be conducted by the City Building Inspector, or his or her designee, herein referred to as the “enforcement officer.” The “enforcement officer” may conduct inspections in and through cooperative efforts with federal state, count or other municipal agencies.

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, 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 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 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.

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-four (24) hours or as soon as it is practicable given the circumstances of the discharge. If the responsible party is provided with a written notice to abate, corrective action or remediation shall occur within the time frame specified in the abatement notice.

6. The enforcement officer shall be permitted to enter and inspect property subject to regulation under this chapter as often as is necessary to determine compliance with this chapter. 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 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 institute other proceedings as are deemed appropriate to compel compliance with the provisions of this chapter, including seeking the 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 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 chapter within thirty (30) days of billing shall constitute a violation of this chapter.

101.07 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.

101.08 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.

101.09 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 ordinance may also be enforced as a municipal infraction within the meaning of Section 4.01, pursuant to the City's municipal infraction ordinance. Anyone violating the provisions of this chapter is guilty of a municipal infraction and shall upon conviction be punished as provided in Chapter 4.
3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

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

1. The appeal must be filed in writing with the City Clerk within five (5) business days of the decision or enforcement action.
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.
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.
4. The City Clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with

Passed, Approved, and Adopted September 25, 2006.

I, Candice Litras, City Clerk, do hereby certify that the above and foregoing was published as Ordinance No. 491 on October 5, 2006.

City Clerk