

[FINAL COMMITTEE DRAFT 07-12-05]

ORDINANCE NO. _____

ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY¹ OF _____
_____, BY ADDING CHAPTER _____,
“CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL”

Section 1. THE CODE OF ORDINANCES, CITY OF _____
_____, is hereby amended to add CHAPTER
“CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL,” 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hereby repealed.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 _____, 20_____.

Mayor

(SEAL)

ATTEST:

City Clerk

¹ IMPORTANT NOTE: For drafting purposes, this ordinance has been prepared for adoption by a city; however,
with appropriate modifications it may serve as a model for other governmental subdivisions as well.

The presence of this watermark confirms that this is the official committee draft coordinated by the Iowa Association of Municipal Utilities with IDNR funding, as of 06-27-05. The drafting committee included representatives of municipalities, IAMU, IDNR, NRCS and URBAN, with legal review by Gordon Greta of Ahlers & Cooney, P.C. Similar looking drafts lacking this watermark have been altered and do not represent the work of the committee.

45 APPROVED AS TO FORM:

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City Attorney²

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

² This model ordinance is furnished as a drafting guide for attorneys representing governmental subdivisions in Iowa that are subject to NPDES Permit Program requirements. CAVEAT: THIS MODEL ORDINANCE SHOULD NOT BE ADOPTED WITHOUT CONFIRMING INDEPENDENT LEGAL RESEARCH BY AN ATTORNEY LICENSED TO PRACTICE LAW IN IOWA. LOCAL CIRCUMSTANCES WILL VARY SIGNIFICANTLY FROM JURISDICTION TO JURISDICTION. CONSIDERATION OF SUCH AN ORDINANCE CALLS FOR CAREFUL ANALYSIS AND DETERMINATION OF A NUMBER OF CRITICAL POLICY ISSUES BY THE GOVERNING BODY OF THE JURISDICTION.

74 CHAPTER _____, CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL
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78 SECTION 1. FINDINGS:
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- 80 1.1. The U.S.EPA’s National Pollutant Discharge Elimination System
81 (“NPDES”) permit program (Program) administered by the Iowa
82 Department of Natural Resources (“IDNR”) requires that cities meeting
83 certain demographic and environmental impact criteria obtain from the
84 IDNR an NPDES permit for the discharge of storm water from a
85 Municipal Separate Storm Sewer System (MS4) (MS4 Permit).³ The City
86 of _____ (City) is subject to the Program and is
87 required to obtain, and has obtained, an MS4 Permit; the City’s MS4
88 Permit is on file at the office of the city clerk and is available for public
89 inspection during regular office hours.
- 90 1.2. The Program requires certain individuals engaged in construction
91 activities (applicant or applicants) to submit an application to the IDNR
92 for a State NPDES General Permit #2. Notwithstanding any provision of
93 this ordinance, every applicant bears final and complete responsibility for
94 compliance with a State NPDES General Permit #2 and a City
95 Construction Site Erosion and Sediment Control (COSESCO) Permit and
96 any other requirement of state or federal law or administrative rule.
- 97 1.3. As a condition of the City’s MS4 Permit, the City is obliged to undertake
98 primary responsibility for administration and enforcement of the Program
99 by adopting a COSESCO ordinance designed to achieve the following
100 objectives:
- 101 1.3.1. Any person, firm, sole proprietorship, partnership, corporation,
102 state agency or political subdivision (“applicant”) required by law
103 or administrative rule to apply to the IDNR for a State NPDES
104 General Permit #2 shall also be required to obtain from the City a
105 CONSTRUCTION SITE EROSION AND SEDIMENT
106 CONTROL permit (City COSESCO Permit) in addition to and not
107 in lieu of the State NPDES General Permit #2; and
- 108 1.3.2. The City shall have primary responsibility for inspection,
109 monitoring and enforcement procedures to promote applicants’
110 compliance with State NPDES General Permits #2 and City
111 COSESCO Permits.
- 112 1.4. No state or federal funds have been made available to assist the City in
113 administering and enforcing the Program. Accordingly, the City shall fund
114 its application, inspection, monitoring and enforcement responsibilities
entirely by fees imposed on the owners of properties which are made

³ A list of cities and entities subject to the Program as of the date of preparation of this model ordinance can be found at this website: <http://www.iowadnr.com/water/stormwater/ms4.html>. Copies of all the forms associated with the NPDES Program can be found at this website: <http://www.iowadnr.com/water/stormwater/forms.html>.

115 subject to the Program by virtue of state and federal law, and/or other
116 sources of funding established by a separate ordinance.⁴

117 1.5. Terms used in this ordinance shall have the meanings specified in the
118 Program.

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120 SECTION 2. APPLICATION PROCEDURE FOR OBTAINING AND MAINTAINING A
121 CITY CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL
122 (COSESCO) PERMIT⁵

123 2.1 All persons required by law or administrative rule to obtain a State NPDES
124 General Permit #2 from the IDNR are required to obtain a City COSESCO
125 Permit.⁶

126 2.2 Applications for City COSESCO Permits shall be made on forms approved
127 by the City which may be obtained from the office of the [city clerk][city
128 administrator][community development department].

129 2.3 An applicant for a City COSESCO Permit shall pay fees as follows:

130 2.3.1 An application fee at the time of application [in the amount
131 of _____] [pursuant to the following schedule:]⁷

132 2.3.2 For each inspection required by this ordinance, the applicant shall
133 pay an inspection fee in the amount of _____.⁸

134 2.3.3 Failure of the applicant to pay an inspection fee within thirty (30)
135 days of billing shall constitute a violation of this ordinance.

136 2.4 An applicant in possession of a State NPDES General Permit #2 issued by
137 the IDNR shall immediately submit to the City full copies of the materials
138 described below as a basis for the City to determine whether to issue a
139 City COSESCO Permit:

⁴ A city may choose to create a stormwater utility in conjunction with a stormwater fee ordinance as a means of providing a source of funding in addition to or in lieu of the application and inspection fees established by this ordinance.

⁵ Instead of requiring an applicant to obtain a separate city COSESCO permit, a city may choose to amend its grading permit ordinance, building permit ordinance, or site plan approval ordinance to require compliance with this COSESCO ordinance as a condition for issuing a grading permit, building permit or site plan approval; in such event, this §1.3.1 might read, "Any person, firm, sole proprietorship, partnership, corporation state agency or political subdivision ('applicant') required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall not be issued a building permit (or grading permit or site plan approval) until the applicant has fully complied with the provisions of this COSESCO ordinance." Contemporaneously, the city grading permit ordinance, building permit ordinance or site plan approval ordinance should be amended to require compliance with this COSESCO ordinance. Other provisions of this COSESCO ordinance will also need to be edited to eliminate any requirement for a separate COSESCO Permit. Finally, the grading permit fee, building permit fee, or site plan approval fee could be adjusted to cover the city's enforcement costs in lieu of COSESCO Permit application fee.

⁶ State NPDES General Permits #2 are required when more than one (1) acre of land is subject to the program. Cities may choose to require City COSESCO Permits in the event of even smaller surface disturbances, where sediment leaving a site and entering a municipal storm sewer would constitute an illicit discharge, making the municipality subject to enforcement actions from IDNR or U.S.EPA.

⁷ The application fee should be set on the basis of a cost-accounting of the City's administrative expenses, including labor costs, associated with processing the application. It would not be unreasonable to establish a schedule of fees dependent upon the scope of the project subject to each City COSESCO Permit. If a city elects to engage an independent contractor to process applications, the costs of such independent contractor should be included in the computation of this fee.

⁸ As indicated above, this and all fees associated with the ordinance should be based on cost-accountings of the activities which the City must undertake or sub-contract to accomplish the purposes of the ordinance.

- 140 2.4.1 applicant’s plans, specifications and supporting materials
141 previously submitted to the IDNR in support of applicant’s
142 application for the State NPDES General Permit #2;
143 2.4.2 applicant’s authorizations issued pursuant to applicant’s State
144 NPDES General Permit #2; and
145 2.4.3 a Stormwater Pollution Prevention Plan (SWPPP) prepared in
146 accordance with this ordinance.
- 147 2.5 Every SWPPP submitted to the City in support of an application for a
148 City COSESCO Permit:
- 149 2.5.1 shall comply with all current minimum mandatory requirements
150 for SWPPPs promulgated by the IDNR in connection with
151 issuance of a State NPDES General Permit #2⁹; and
152 2.5.2 shall, if the applicant is required by law to file a Joint Application
153 Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT
154 OF NATURAL RESOURCES AND U.S. ARMY CORPS OF
155 ENGINEERS, comply with all mandatory minimum requirements
156 pertaining to such applications¹⁰; and
157 2.5.3 shall comply with all other applicable state or federal permit
158 requirements in existence at the time of application; and
159 2.5.4 shall be prepared by a licensed professional engineer or landscape
160 architect or a professional in erosion and sediment control or a
161 representative of the local Soil and Water Conservation District,
162 credentialed in a manner acceptable to the City¹¹; and
163 2.5.5 shall include within the SWPPP a signed and dated certification by
164 the person preparing the SWPPP that the SWPPP complies with all
165 requirements of this ordinance.

⁹ As of the time of drafting this model ordinance, minimum mandatory requirements promulgated by the IDNR for issuance of a State NPDES General Permit #2 are as set out in IDNR publication “IOWA DEPARTMENT OF NATURAL RESOURCES NPDES GENERAL PERMIT NO. 2, STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY FOR CONSTRUCTION ACTIVITIES, EFFECTIVE DATE – OCTOBER 1, 2002 TO OCTOBER 1, 2007,” including but not limited to “PART IV. STORM WATER POLLUTION PREVENTION PLANS,” which is accessible at this website: http://www.iowadnr.com/water/stormwater/forms/2_general.pdf. Said IDNR publication in turn references water quality standards. Current water quality standards are specified in the Iowa Administrative Code, in section 567, chapter 61, at this website: <http://www.legis.state.ia.us/Rules/Current/iac/567iac/56761/56761.pdf>. As is the case with any federal or state program, mandatory minimum SWPPP requirements may change over time, and it is vital that local officials responsible for enforcement of this ordinance stay abreast of such changes. It is recommended that these provisions be adopted by reference rather than included verbatim within the ordinance for at least three reasons: (1) adoption by reference minimizes the length and complexity of the ordinance; (2) if the IDNR changes requirements, adoption by reference avoids the necessity of rewriting the ordinance; and (3) adoption by reference makes it clear to applicants that they are not being asked to comply with conflicting local and state requirements.

¹⁰ As of the time of drafting this model ordinance, the circumstances necessitating the filing of such a joint application are as set out in the Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, which is accessible at this website: <http://www.iowadnr.com/other/files/jointpermit.pdf>

¹¹ The requirement that a SWPPP shall be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control credentialed in a manner acceptable to the City gives the City a basis for recourse against such professional’s malpractice carrier in the event a SWPPP later proves to be faulty. Cities not desiring such assurance or opportunity for recourse may choose to dispense with this requirement in favor of a less arduous standard.

- 166 2.6 **[OPTIONAL]**¹² In addition to the SWPPP requirements stated in
167 subparagraph 2.5 immediately above which constitute minimum
168 mandatory requirements imposed by the Program, every SWPPP
169 submitted to the city in support of an application for a City COSESCO
170 Permit shall comply with the Statewide Urban Design and Specifications
171 (SUDAS)¹³ standard design criteria, including but not limited to design,
172 location, and phased implementation of effective, practicable stormwater
173 pollution prevention measures, and shall also:
174 2.6.1 limit total off-site annual aggregate sediment yield for exposed
175 areas to an equivalent amount resulting from sheet and rill erosion
176 equal to an annual, cumulative soil loss rate not to exceed the
177 standard established from time to time by Soil and Water
178 Conservation Districts; erosion rates can exceed soil loss limits as
179 long as sediment yield does not exceed that expected from
180 allowable erosion rates; and
181 2.6.2 identify the nature of the construction activity and the potential for
182 sediment and other pollutant discharges from the site; and
183 2.6.3 calculate the predicted erosion and estimated sediment yield for the
184 construction site using the USDA Revised Universal Soil Loss
185 Equation (RUSLE II); and
186 2.6.4 assure that stockpiles of soil or other materials subject to erosion
187 by wind or water are covered, vegetated, or otherwise effectively
188 protected from erosion and sedimentation in accordance with the
189 amount of time the material will be on site and the manner of its
190 proposed use; no stockpiling is allowed in the street; and
191 2.6.5 identify measures and procedures to reasonably minimize site soil
192 compaction and provide soil quality restoration as specified; and
193 2.6.6 assure that all temporary erosion and sediment controls shall not be
194 removed until the City has determined that the site has been
195 permanently stabilized; and
196 2.6.7 assure that all disturbed sites be permanently stabilized with 70%
197 perennial cover as measured by the USDA line transect method;
198 and
199 2.6.8 identify methods to prevent sediment damage to adjacent
200 properties and sensitive environmental areas such as water bodies,
201 plant communities, rare, threatened and/or endangered species
202 habitat, wildlife corridors, greenways, etc.; and
203 2.6.9 provide for design and construction methods to stabilize steep or
204 long continuous slopes; and,

¹² These additional recommended standards were developed by representatives from Phase I and Phase II cities, IAMU, IDNR, Soil and Water Conservation Districts, URBAN, and USDA's Natural Resources Conservation Service, pursuant to an IDNR 319 grant funded by the U.S.EPA. The recommendations are presented in no particular order. It is for each city to determine as a matter of policy which optional standards, if any, it chooses to impose.

¹³ SUDAS standard design criteria can be found at this website: www.iowasudas.org.

- 205 2.6.10 include measures to control the quantity and quality of stormwater
- 206 leaving a site before, during and after construction; and
- 207 2.6.11 provide for stabilization of all waterways and outlets; and,
- 208 2.6.12 protect storm sewer infrastructure from sediment loading/plugging;
- 209 and
- 210 2.6.13 specify precautions to be taken to contain sediment when working
- 211 in or crossing water bodies; and
- 212 2.6.14 assure stabilization of disturbed areas, including utility
- 213 construction areas, as soon as possible; and
- 214 2.6.15 protect outlying roads from sediment and mud from construction
- 215 site activities, including tracking; and
- 216 2.6.16 provide for disposal of collected sediment and floating debris; and
- 217 2.6.17 assure that when working near sensitive waters, the specific
- 218 practices itemized immediately below are utilized:
- 219 2.6.17.1 during construction:
- 220 2.6.17.1.1 all exposed soil areas with a slope of 3:1 or
- 221 steeper, that have a continuous positive
- 222 slope to a sensitive water, should have
- 223 temporary erosion protection or permanent
- 224 cover within three (3) days after the area is
- 225 no longer actively being worked; all other
- 226 slopes that have a continuous positive slope
- 227 to a sensitive water should have temporary
- 228 erosion protection or permanent cover
- 229 within seven (7) days after the area is no
- 230 longer actively being worked, and
- 231 2.6.17.1.2 temporary sediment basin requirements
- 232 should be used for common drainage
- 233 locations that serve an area with five (5) or
- 234 more acres disturbed at one time; and
- 235 2.6.17.2 buffer zone: provide for the maintenance at all times of
- 236 an undisturbed buffer zone consisting of not less than
- 237 100 linear feet from the special water (not including
- 238 tributaries); exceptions from this for areas, such as
- 239 water crossings or limited water access, are allowed if
- 240 the applicant fully documents in the SWPPP the
- 241 circumstances and reasons that the buffer encroachment
- 242 is necessary; all potential water quality, scenic and
- 243 other environmental impacts of these exceptions should
- 244 be minimized and documented in the SWPPP for the
- 245 project; and
- 246 2.6.17.3 enhanced temperature controls: design the permanent
- 247 stormwater management system such that the discharge
- 248 from the project will minimize any increase in the
- 249 temperature.
- 250 2.6.17.3.1 minimize new impervious surfaces; and/or

- 251 2.6.17.3.2 other methods that will minimize any
252 increase in the temperature of the sensitive
253 waters.
254 2.7 Issuance by the City of a City COSESCO Permit shall be a condition
255 precedent for the issuance of a City building permit or site plan approval.
256 2.8 For so long as a construction site is subject to a State NPDES General
257 Permit #2 or a City COSESCO Permit, the applicant shall provide the City
258 with current information as follows:
259 2.8.1 The name, address and telephone number of the person on site
260 designated by the owner who is knowledgeable and experienced in
261 erosion and sediment control and who will oversee compliance
262 with the State NPDES General Permit #2 and the City COSESCO
263 Permit;
264 2.8.2 The name(s), address(es) and telephone number(s) of the
265 contractor(s) and/or subcontractors(s) that will implement each
266 erosion and sediment control measure identified in the SWPPP.
267 2.8.3 Applicant's failure to provide current information shall constitute a
268 violation of this ordinance.
269 2.9 Developers can transfer State NPDES General Permit #2 and the City
270 COSESCO Permit responsibility to homebuilders, new lot owners,
271 contractors and subcontractors. Transferees must agree to the transfer in
272 writing, must agree to fulfill all obligations of the SWPPP, the State
273 NPDES General Permit #2 and the City COSESCO Permit. Absent such
274 written confirmation of transfer of obligations, the developer remains
275 responsible for compliance on any lot that has been sold. A developer
276 shall notify the City of any application to the DNR for release of any
277 property from a General Permit #2 pursuant to 567 IAC 64.6(b) or any
278 similar successor provision.
279 2.10 Upon receipt of an application for a City COSESCO Permit, the City shall
280 either find that the application complies with this ordinance and issue a
281 City COSESCO Permit in accordance with this ordinance, or that the
282 application fails to comply with this ordinance, in which case the City
283 shall provide a bill of particulars identifying non-compliant elements of
284 the application.¹⁴
285 2.11 Application for termination of a City COSESCO Permit shall be made in
286 the following manner:¹⁵
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288 SECTION 3. INSPECTION PROCEDURES FOR CITY COSESCO PERMITS.
289 3.1 All inspections required under this ordinance shall be conducted by [the city
290 engineer][the city public works director][the community development

¹⁴ Each city must determine for itself, based on the availability and expertise of city staff, whether this determination will be made "in-house" or by a third-party contractor designated by the city. In any event, it is imperative that the total cost of such determination should be the basis for setting the application fee specified above.

¹⁵ Some cities may desire to include a procedure for terminating a COSESCO Permit; the circumstances under which a city may choose to allow termination is a policy determination to be made by the City Council.

- 291 director][the building inspector][a subcontractor credentialed in a manner
292 satisfactory to the city], hereinafter referred to as the “enforcement officer.”
- 293 3.2 Applicant shall notify the City when all measures required by applicant’s
294 SWPPP have been accomplished on-site, whereupon the City shall conduct
295 an inspection for the purpose of determining compliance with this
296 ordinance, and shall within a reasonable time thereafter report to the
297 applicant either that compliance appears to have been achieved, or that
298 compliance has not been achieved, in which case the City shall provide a
299 bill of particulars identifying the conditions of non-compliance. The
300 applicant shall immediately commence corrective action and shall complete
301 such corrective action within twenty-four (24) hours of receiving the City’s
302 bill of particulars. For good cause shown, the City may extend the deadline
303 for taking corrective action. Failure to take corrective action in a timely
304 manner shall constitute a violation of this ordinance.¹⁶
- 305 3.3 Construction shall not occur on the site at any time when the City has
306 identified conditions of non-compliance.¹⁷
- 307 3.4 Construction activities undertaken by an applicant prior to resolution of all
308 discrepancies specified in the bill of particulars shall constitute a violation
309 of this ordinance.¹⁸
- 310 3.5 The City shall not be responsible for the direct or indirect consequences to
311 the applicant or to third-parties for non-compliant conditions undetected by
312 inspection.

313
314 SECTION 4. MONITORING PROCEDURES FOR CITY COSESCO PERMITS

- 315 4.1 Upon issuance of a City COSESCO Permit, an applicant has an absolute
316 duty to monitor site conditions and to report to the enforcement officer any
317 change of circumstances or site conditions which the applicant knows or
318 should know pose a risk of stormwater discharge in a manner inconsistent
319 with applicant’s SWPPP, State NPDES General Permit #2 and/or City
320 COSESCO Permit.
- 321 4.1.1 Such report shall be made by the applicant to the enforcement
322 officer immediately but in any event within twenty four (24) hours
323 of the change of circumstances or site conditions.
- 324 4.1.2 Failure to make a timely report shall constitute a violation of this
325 ordinance.
- 326 4.2 Any third party may also report to the City site conditions which the third
327 party reasonably believes pose a risk of stormwater discharge in a manner

¹⁶ The precise manner of inspection is not specified in the law or the rules. Accordingly, this paragraph is designed to provide an example of how a city might set up an inspection program. Moreover, as of the date of this model COSESCO ordinance, all MS4 cities do not have identical inspection requirements. Prior to finalizing this provision, a city should confirm its inspection obligations specified in its MS4 Permit as originally issued or subsequently amended.

¹⁷ This prohibition is not specified in the law or the rules. However, it would seem sensible to include such a provision to make enforcement more effective.

¹⁸ This provision is not specified in the law or the rules, but basic ordinance drafting principles suggest that matters constituting ordinance violations be set out explicitly.

- 328 inconsistent with applicant’s SWPPP, State NPDES General Permit #2
329 and/or City COSESCO Permit.
- 330 4.3 Upon receiving a report pursuant to the previous subsections, the
331 enforcement officer shall conduct an inspection of the site as soon as
332 reasonably possible and thereafter shall provide the applicant with a bill of
333 particulars identifying the conditions of non-compliance. The applicant shall
334 immediately commence corrective action and shall complete such corrective
335 action within twenty-four (24) hours of receiving the City’s bill of
336 particulars. For good cause shown, the City may extend the deadline for
337 completing corrective action. Failure to take corrective action in a timely
338 manner shall constitute a violation of this ordinance, whereupon the
339 enforcement officer shall immediately commence enforcement actions
340 specified in SECTION 5 below.
- 341 4.4 Unless a report is made to the enforcement officer pursuant to the previous
342 subsections, the enforcement officer shall conduct at least one unannounced
343 inspection during the course of construction to monitor compliance with the
344 State NPDES General Permit #2 and the City COSESCO Permit. If the
345 inspection discloses any significant non-compliance, the enforcement
346 officer shall provide the applicant with a bill of particulars identifying the
347 conditions of non-compliance. The applicant shall immediately commence
348 corrective action and shall complete such corrective action within twenty-
349 four (24) hours of receiving the City’s bill of particulars. For good cause
350 shown, the City may extend the deadline for completing corrective action.
351 Failure to take corrective action in a timely manner shall constitute a
352 violation of this ordinance, whereupon the enforcement officer shall
353 immediately commence enforcement actions specified in SECTION 5
354 below.
- 355 4.5 The City shall not be responsible for the direct or indirect consequences to
356 the applicant or to third-parties for non-compliant conditions undetected by
357 inspection.
- 358
- 359 SECTION 5. ENFORCEMENT
- 360 5.1 Violation of any provision of this ordinance may be enforced by civil action
361 including an action for injunctive relief. In any civil enforcement action,
362 administrative or judicial, the City shall be entitled to recover its attorneys’
363 fees and costs from a person who is determined by a court of competent
364 jurisdiction to have violated this ordinance.
- 365 5.2 Violation of any provision of this ordinance may also be enforced as a
366 municipal infraction within the meaning of §364.22, pursuant to the City’s
367 municipal infraction ordinance.¹⁹

¹⁹ A city may consider various enforcement mechanisms. However, the Iowa Code furnishes cities with a very useful tool called “municipal infractions.” A municipal infraction is a hybrid between a crime and a common law tort, e.g., nuisance, but it is much easier to establish than either a crime or a tort. If a city adopting this ordinance does not already have a municipal infraction ordinance, one should be seriously considered for reasons which are beyond the scope of this model ordinance.

368 5.3 Enforcement pursuant to this section shall be undertaken by the
369 enforcement officer upon the advice and consent of the City Attorney.
370

371 SECTION 6. PERFORMANCE BOND OR CASH SECURITY²⁰

372 6.1 Along with the application for a City COSESCO Permit, the applicant shall
373 post security for compliance with all requirements imposed by the State
374 NPDES General Permit #2 and the City COSESCO Permit as well as
375 necessary remedial work resulting from violation of any provision of this
376 ordinance in an amount of \$_____per gross acre or \$
377 _____for each single or twin family home, whichever is
378 greater. This amount shall apply to the maximum acreage of soil that will
379 be simultaneously exposed during the project’s construction.

380 6.2 Acceptable forms of Performance Security include the following:

381 6.2.1 Performance Bonds;

382 6.2.2 Surety Bonds;

383 6.2.3 Money Orders;

384 6.2.4 Certificates of Deposit.

385 6.3 The application form signed by the applicant for a City COSESCO Permit
386 shall include the following commitment by the applicant: “In addition to the
387 performance security posted with this application, the undersigned applicant
388 hereby agrees to defend, indemnify and hold the City harmless from any
389 and all claims, damages or suits arising directly or indirectly out of any act
390 of commission or omission by the applicant, or any employee, agent, assign
391 or contractor or subcontractor of the applicant, in connection with
392 applicant’s State NPDES General Permit #2 and/or City COSESCO
393 Permit.²¹
394

395 SECTION 7. APPEAL

396 7.1 Administrative decisions by city staff and enforcement actions of the
397 enforcement officer may be appealed by the applicant to the city council
398 pursuant to the following rules:²²

399 7.1.1 The appeal must be filed in writing with the city clerk within five (5)
400 business days of the decision or enforcement action.

401 7.1.2 The written appeal shall specify in detail the action appealed from,
402 the errors allegedly made by the enforcement officer giving rise to
403 the appeal, a written summary of all oral and written testimony the

²⁰ It must be acknowledged that the financial security provisions of this SECTION 6 are stringent and may even be deemed by city officers or applicants as inordinately so. Accordingly, cities may choose a more flexible menu of security options, including but not limited to letters of credit. Cities might also choose to include a provision such as, “...or any other form of security acceptable to the City...,” provided that cities choosing to exercise such discretion must be prepared to demonstrate a lack of bias if any particular ad-hoc security requirement decision is challenged by a disgruntled applicant.

²¹ Even if a city chooses to dispense with a Performance Bond or Cash Security, the “defend and hold harmless” terms of this §6.3 should be retained.

²² If the city already has rules applicable to the appeal of enforcement actions, the existing process may be incorporated by reference in lieu of the indicated language. The specificity of this provision in terms of time-lines, hearings and decisions are necessary in order to satisfy constitutional principles of due process and equal protection.

404 applicant intends to introduce at the hearing, including the names
405 and addresses of all witnesses the applicant intends to call, copies of
406 all documents the applicant intends to introduce at the hearing, and
407 the relief requested.

408 7.1.3 The enforcement officer shall specify in writing the reasons for the
409 enforcement action, a written summary of all oral and written
410 testimony the enforcement officer intends to introduce at the
411 hearing, including the names and addresses of all witnesses the
412 enforcement officer intends to call, and copies of all documents the
413 enforcement officer intends to introduce at the hearing.

414 7.1.4 The city clerk shall notify the applicant and the enforcement officer
415 by ordinary mail, and shall give public notice in accordance with
416 Chapter 21, Iowa Code, of the date, time and place for the regular or
417 special meeting of the city council at which the hearing on the
418 appeal shall occur. The hearing shall be scheduled for a date not less
419 than four (4) nor more than twenty (20) days after the filing of the
420 appeal. The rules of evidence and procedure, and the standard of
421 proof to be applied, shall be the same as provided by Chapter 17A,
422 Code of Iowa. The applicant may be represented by counsel at the
423 applicant's expense. The enforcement officer may be represented by
424 the city attorney or by an attorney designated by the city council at
425 City expense.

426 7.2 The decision of the city council shall be rendered in writing and may be
427 appealed to the Iowa District Court.

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