

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 10-15-07. The drafting committee included representatives of municipalities, IAMU, IDNR, NRCS, URBAN and SUDAS, with legal review by Gordon Greta of Ahlers & Cooney, P.C. The Iowa Homebuilders were invited to participate as a representative of the developer community but declined. Similar looking drafts lacking this watermark have been altered and do not represent the work of the committee.

1 MODEL POST-CONSTRUCTION STORMWATER RUNOFF CONTROL ORDINANCE
2 [UNOFFICIALLY BUT COMMONLY CALLED THE "POST-CON ORDINANCE"]
3

4
5 ORDINANCE NO. _____
6

7 ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY¹ OF _____
8 _____, BY ADDING CHAPTER _____,
9 "POST-CONSTRUCTION STORMWATER CONTROL"
10

11 Section 1. THE CODE OF ORDINANCES, CITY OF _____
12 _____, is hereby amended to add CHAPTER _____ "POST-
13 CONSTRUCTION STORMWATER CONTROL," in the form attached hereto.
14

15 Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are
16 hereby repealed.
17

18 Section 3. Severability Clause. If any section, provision or part of this ordinance shall be
19 adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the
20 ordinance as a whole or any section, provision or part thereof not adjudged invalid or
21 unconstitutional.
22

23 Section 4. Effective Date. This ordinance shall be effective from and after the final passage,
24 approval and publication as provided by law.
25

26 PASSED AND APPROVED this ____ day of _____, 20 ____.
27
28
29

30 _____
31 Mayor
32
33

34 (SEAL)
35

36 ATTEST:
37
38
39

40 _____
41 City Clerk
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43

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.

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APPROVED AS TO FORM:

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.

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74 CHAPTER____, POST-CONSTRUCTION STORMWATER CONTROL

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76
77 Section 1. General Provisions

78 Findings of Fact

79 The U.S.EPA’s National Pollutant Discharge Elimination System (“NPDES”) permit program
80 (Program) administered by the Iowa Department of Natural Resources (“IDNR”) requires that
81 cities meeting certain demographic and environmental impact criteria obtain from the IDNR an
82 NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System
83 (MS4) (MS4 Permit).³ The City of _____(City) is
84 subject to the Program and is required to obtain, and has obtained,

85 an MS4 Permit; the City’s MS4 Permit is on file at the office of the
86 city clerk and is available for public inspection during regular
87 office hours.

88 As a condition of the City’s MS4 Permit, the City is obliged to adopt and enforce a POST-
89 CONSTRUCTION STORMWATER CONTROL ordinance.

90 No state or federal funds have been made available to assist the City in administering and
91 enforcing the Program. Accordingly, the City shall fund its operations under this ordinance
92 entirely by charges imposed on the owners or developers of properties which are made subject
93 to the Program by virtue of state and federal law, and/or other sources of funding established by a
94 separate ordinance.⁴

95 Land development and associated increases in impervious cover alter the hydrologic response
96 of local watersheds and increase stormwater runoff rates and volumes, flooding, stream
97 channel erosion, and sediment transport and deposition; this stormwater runoff contributes to
98 increased quantities of water-borne pollutants, and; stormwater runoff, soil erosion and
99 nonpoint source pollution can be controlled and minimized through the regulation of
100 stormwater runoff from development sites.

101 Therefore, City establishes this set of City stormwater standards applicable to all surface waters⁵
102 to provide reasonable guidance for the regulation of stormwater runoff for the purpose of
103 protecting local water resources from degradation. It is determined that the regulation of
104 stormwater runoff discharges from land development

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>.

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 administrative cost recovery mechanism suggested herein.

⁵ Cities in the vicinity of “sensitive waters” may wish to consider requiring Controls that address water temperature.

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113 and other construction activities in order to control and minimize
114 increases in stormwater runoff rates and volumes, soil erosion,
115 stream channel erosion, and nonpoint source pollution associated
116 with stormwater runoff, is in the public interest and will prevent
117 threats to public health and safety.
118 The determination of appropriate minimum stormwater
119 management standards (standards) and the development of
120 effective best management practices (BMPs) to achieve those
121 standards requires technical expertise that may not always be
122 readily available within City’s own staff. Moreover, it is important
123 that such standards and BMPs be reasonably consistent across the
124 state so that property owners and developers are not confronted
125 with myriad variations depending upon the location of
126 development. The “Iowa Stormwater Management Manual ”⁶
127 published collaboratively by the Iowa Department of Natural
128 Resources and The Center for Transportation Research and
129 Education at Iowa State University establishes guidelines
130 consisting of unified sizing criteria, stormwater management
131 designs and specifications and BMPs. City hereby finds and
132 declares that the guidelines provided for in the Iowa Stormwater
133 Management Manual, and in future editions thereof, should be and
134 are hereby adopted as the stormwater management standards of
135 City. Any BMP installation that complies with the provisions of
136 the Iowa Stormwater Management Manual, or future editions
137 thereof, at the time of installation shall be deemed to have been
138 installed in accordance with this ordinance.

139 Purpose: The purpose of this ordinance is to adopt as City’s standards the
140 guidelines established in the Iowa Stormwater Management Manual (hereinafter
141 collectively City’s “stormwater requirements” or “standards”) in order to protect
142 and safeguard the general health, safety, and welfare of the public within this
143 jurisdiction. This ordinance seeks to meet that purpose through the following
144 objectives:

- 145 1.2.1 minimize increases in stormwater runoff from development within
146 the city limits and fringe area in order to reduce flooding, siltation,
147 increases in stream temperature, and streambank erosion and
148 maintain the integrity of stream channels;
- 149 1.2.2 minimize increases in nonpoint source pollution caused by
150 stormwater runoff from development which would otherwise
151 degrade local water quality;
- 152 1.2.3 minimize the total annual volume of surface water runoff which
153 flows from any specific development project site after completion

⁶ The Iowa Department of Natural Resources (IDNR) in collaboration with The Center for Transportation Research and Education (CTRE) at Iowa State University are, as of the date of this model ordinance, preparing to issue (or may have already issued) the Iowa Stormwater Management Manual. The manual includes guidelines for stormwater quality and quantity management that can be adopted in part or in whole by local jurisdictions. This model ordinance is drafted to adopt the manual in its entirety.

- 154 to not exceed the pre-development hydrologic regime to the
155 maximum extent practicable; and
156 1.2.4 reduce stormwater runoff rates and volumes, soil erosion and
157 nonpoint source pollution, wherever possible, through
158 establishment of appropriate minimum stormwater management
159 standards and BMPs and to ensure that BMPs are properly
160 maintained and pose no threat to public safety.
- 161 1.3. Applicability
162 1.3.1 This ordinance shall be applicable to all subdivision or site plan
163 applications meeting the minimum square foot applicability criteria
164 of §1.3.2, unless eligible for an exemption or granted a waiver by
165 City under Section 4 of this ordinance. The ordinance also applies
166 to land disturbance activities that are smaller than the minimum
167 square foot applicability criteria specified in §1.3.2 if such
168 activities are part of a larger common plan of development that
169 meets the minimum square foot applicability criteria of §1.3.2,
170 even though multiple separate and distinct land development
171 activities may take place at different times on different schedules.
172 In addition, all plans must also be reviewed by local environmental
173 protection officials to ensure that established water quality
174 standards will be maintained during and after development of the
175 site and that post construction runoff levels are consistent with any
176 local and regional watershed plans.
- 177 1.3.2 City stormwater requirements must be met for development to be
178 approved. City stormwater requirements apply to any development
179 disturbing _____⁷ or more square feet of land, and to any
180 development disturbing less than said number of square feet of
181 land if the amount of impervious cover created exceeds _____
182 square feet. The following activities are exempt from this
183 ordinance:
184 1.3.2.1 Any logging and agricultural activity which is consistent
185 with an approved soil conservation plan or a timber
186 management plan prepared or approved by the (appropriate
187 agency), as applicable.
188 1.3.2.2 Additions or modifications to existing single family
189 structures.
190 1.3.2.3 Developments that do not disturb more than _____
191 square feet of land provided they are not part of a larger
192 common development plan.

⁷ Federal law mandates that this ordinance apply to land disturbance activities of at least one acre (43,560 square feet) or more. See Storm Water Phase II Final Rule (www.epa.gov/npdes/regulations/phase2.pdf). For sites less than the threshold number of square feet specified immediately above but which nevertheless create a substantial new amount of impervious cover (e.g., 5000 square feet of impervious cover), local officials may wish to make the guidelines apply. In any event, the number specified in this §1.3.2 must coincide with the number of square feet specified in §1.3.2.3 and in the definition of “development” in §2.

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- 2.7 “Drainage Easement” means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.
- 2.8 “Enforcement Officer” means that person or persons designated by the City having responsibility for administration and enforcement of this ordinance.⁹
- 2.9 “Fee in Lieu” means a payment of money in place of achieving or exceeding all or part of City stormwater requirements.¹⁰
- 2.10 “Iowa Stormwater Management Manual” means the manual collaboratively developed by the Iowa Department of Natural Resources (IDNR) and the Center for Transportation Research and Education (CTRE) at Iowa State University that contains the sizing criteria, design and specification guidelines and BMPs that address stormwater quality and quantity management.
- 2.11 “Land Disturbance Activity” means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.
- 2.12 “Landowner” means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.
- 2.13 “Maintenance Agreement” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water BMPs.
- 2.14 “Stormwater Management” means the use of BMPs that are designed in accordance with City stormwater requirements to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.
- 2.15 “Stormwater Pollution Prevention Plan” (SWPPP) means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities and include provisions for additional pollution prevention.
- Section 3. Permit Procedures and Requirements¹¹

⁹ The City should of course specify the title of the designated individual to avoid confusion.

¹⁰ This §2.8, along with §4, are believed to be free of the infirmities recently detected by the Iowa Supreme Court in municipal ordinances dealing with park land and franchise fees. However, the very strict construction that the Court has utilized in recent challenges to municipal ordinances should be taken into account by cities giving consideration to using this model ordinance. The fees or other in-lieu-of requirements of these provisions should be carefully calibrated to manifest a reasonable cost-based relationship to the compliance a developer is seeking thereby to avoid.

¹¹ It is not the intention of the committee to suggest that a new, separate permit process is contemplated independent of the COESCO permit process (or its equivalent). Rather, the committee recommends that the requirements of this

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- 3.1. Permit Required. No land owner or developer shall receive any of the building, grading or other land development permits required for land disturbance activities without first meeting the requirements of this ordinance prior to commencing the proposed activity.
 - 3.2. Application Requirements
 - 3.2.1 Unless specifically exempted by this ordinance, any land owner or developer desiring a permit for a land disturbance activity shall submit to City a permit application on a form provided for that purpose.
 - 3.2.2 Unless otherwise exempted by this ordinance, a permit application must be accompanied by the following in order that the permit application be considered:
 - 3.2.2.1 a stormwater management concept plan;
 - 3.2.2.2 a maintenance agreement; and
 - 3.2.2.3 a non-refundable permit review fee.
 - 3.2.3 The stormwater management concept plan and maintenance agreement shall be prepared to meet the requirements of Section 6 of this ordinance, and fees shall be those established by the City annually or more often by separate ordinance or resolution.¹²
 - 3.3. Application Review Fees
 - 3.3.1 The fee for review of any land development application shall be based on the amount of land to be disturbed at the site,¹³ and the fee structure shall be established by City, and shall be paid prior to the issuance of any applicable City permits.
 - 3.3.2 All such revenue shall be credited to a City budgetary category to support the administration of this ordinance
 - 3.4. Application Procedure
 - 3.4.1 Applications for land disturbance activity permits must be filed for review with City's Office of Community Development¹⁴ on any regular business day.
 - 3.4.2 Permit applications shall include the following:
 - 3.4.2.1 two copies of the stormwater management concept plan,
 - 3.4.2.2 two copies of the maintenance agreement, and
 - 3.4.2.2 any required review fees.

POST-CON ordinance and the requirements of the COSESCO ordinance (or its equivalent) be components of a single permitting process.

¹² Cities adopt myriad fees to cover the costs of operations for special activities that benefit specific groups which it would be inappropriate to spread across all taxpayers through property taxes. It is recommended that as part of the normal budget preparation process, cities annually adopt a single ordinance or resolution adjusting all city fees at the same time.

¹³ In order for the administration and enforcement of this ordinance to be self-funded, the fees ultimately established should be supported by careful and comprehensive cost accounting studies that take into effect all of the direct and indirect costs to the City, including site inspection costs, for all activities required of the City by the ordinance.

¹⁴ This title should be adjusted to reflect the actual name of the city department charged with the duty to administer this ordinance; for purposes of consistency, however, this title shall be used throughout this model ordinance. Some cities may choose to contract with a third party engineer to conduct this review.

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- 306 3.4.3 Within _____ business days of the receipt of a complete permit
307 application, including all documents as required by this ordinance,
308 City shall inform the applicant whether the application, plan and
309 maintenance agreement are approved or disapproved.
310 3.4.4. If the permit application, stormwater management concept plan or
311 maintenance agreement are disapproved, the applicant may revise
312 the stormwater management concept plan or agreement. If
313 additional information is submitted, City shall have _____
314 business days from the date the additional information is received
315 to inform the applicant that the stormwater management concept
316 plan and maintenance agreement are either approved or
317 disapproved.
318 3.4.5 If the permit application, stormwater management final plan and
319 maintenance agreement are approved by City, all appropriate land
320 disturbance activity permits shall be issued.
321 3.5. Permit Duration. Permits issued under this section shall be valid from the
322 date of issuance through the date City notifies the permit holder that all
323 stormwater BMPs have passed the final inspection required under permit
324 conditions.
325
326 Section 4. Waivers ¹⁵
327 4.1. Every applicant shall provide for stormwater management as required by
328 this ordinance, unless a written request to the City for a partial waiver of
329 BMPs is granted pursuant to paragraph 4.2 hereof, or unless a written
330 request to the City for a general waiver of BMPs is granted pursuant to
331 paragraph 4.3 hereof.
332 4.2 PARTIAL WAIVERS:
333 4.2.1 A partial waiver of BMPs required by this ordinance may be
334 granted provided that at least one of the following threshold
335 conditions is established by applicant based on authoritative
336 written evidence satisfactory to City; if none of the following
337 threshold conditions can be established, the application must be
338 denied:
339 4.2.1.1 The proposed development is not likely to impair
340 attainment of the objectives of this ordinance.
341 4.2.1.2 Alternative minimum requirements for on-site management
342 of stormwater have been established in a stormwater
343 management final plan that has been approved by City and
344 fully implemented.
345 4.2.1.3 Provisions are made to manage stormwater by an off-site
346 facility. The off-site facility is required to be in place, to be
347 designed and adequately sized to provide a level of

¹⁵ “Waivers” of ordinance requirements are inevitably fraught with risks of violation of state and federal “due process” and “equal protection” constitutional provisions. Consistency from case to case supported by very careful and comprehensive administrative guidelines and record making and keeping protocols will make it easier for a city to defend against claims that it has gone easier on one developer than another, but nothing can prevent such claims.

- 348 stormwater control that is equal to or greater than that
349 which would be afforded by on-site practices and there is,
350 in City's sole judgment, a responsible entity legally
351 obligated to monitor the performance of and maintain the
352 efficiency of stormwater BMPs in accordance with a
353 written and recorded maintenance agreement.
- 354 4.2.2 If the applicant fails to establish at least one of the threshold
355 conditions for granting a partial waiver specified in paragraph 4.2.1
356 hereof, the application must be denied. However, if the applicant
357 successfully establishes at least one of the threshold conditions for
358 granting a partial waiver specified in paragraph 4.2.1 hereof, the
359 applicant must further establish by authoritative written evidence
360 satisfactory to City that the partial waiver will not result in any one
361 or more of the following impacts to downstream waterways; if a
362 partial waiver would result in any one or more of the following
363 impacts to downstream waterways, the application must be denied:
364 4.2.2.1 deterioration of existing culverts, bridges, dams, and other
365 structures; or
366 4.2.2.2 degradation of biological functions or habitat; or
367 4.2.2.3 accelerated streambank or streambed erosion or siltation; or
368 4.2.2.4 increased threat of flood damage to public health, life,
369 property.
- 370 4.3 GENERAL WAIVERS:
- 371 4.3.1 If City finds that a general waiver is appropriate because
372 implementation of no on-site stormwater BMPs is feasible due to
373 the natural or existing physical characteristics of a site, or that
374 none of the conditions specified in 4.2.1 above can be established
375 to a certainty, or that any one or more of the impacts to
376 downstream waterways specified in 4.2.2 above can not be entirely
377 averted, the applicant shall execute a binding written agreement to
378 accomplish one or more of the following mitigation measures
379 selected by City:
- 380 4.3.1.1 The purchase and donation of privately owned lands, or the
381 grant of an easement to be dedicated for preservation
382 and/or reconstruction of native ecosystems of lands
383 strategically located in the watershed consistent the
384 purposes of this ordinance, of a sufficient quantity to enable
385 City or others to achieve City stormwater requirements
386 with respect to a number of cubic feet of annual stormwater
387 equivalent to the estimated number of cubic feet of annual
388 stormwater that will not achieve City stormwater
389 requirements as a consequence of the waiver.
- 390 4.3.1.2 The creation of one or more stormwater BMPs on
391 previously developed properties, public or private, that
392 currently lack stormwater BMPs, having a capacity to
393 achieve City stormwater requirements with respect to a

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394 number of cubic feet of annual stormwater equivalent to the
395 estimated number of cubic feet of annual stormwater that
396 will not achieve City stormwater requirements as a
397 consequence of the waiver.

398 4.3.1.3 Monetary contributions (Fee-in-Lieu) to fund stormwater
399 management activities such as research and studies (e.g.,
400 regional wetland delineation studies, stream monitoring
401 studies for water quality and macroinvertebrates, stream
402 flow monitoring, threatened and endangered species
403 studies, hydrologic studies, monitoring of stormwater
404 BMPs, and stream corridor stabilization practices). The
405 monetary contribution required shall be in accordance with
406 a fee schedule (unless the developer and the stormwater
407 authority agree on a greater alternate contribution)
408 established by City based on the estimated cost savings to
409 the developer resulting from the waiver and the estimated
410 future costs to City to achieve City stormwater
411 requirements with respect to a number of cubic feet of
412 annual stormwater equivalent to the estimated number of
413 cubic feet of annual stormwater that will not achieve City
414 stormwater requirements as a consequence of the waiver.
415 All of the monetary contributions shall be credited to an
416 appropriate capital improvements program project, and
417 shall be made by the developer prior to the issuance of any
418 building permit for the development.

419 4.3.1.4 Dedication of land or granting of an easement by the
420 applicant of a value equivalent to the cost to City of the
421 construction of an off-site stormwater management facility
422 sufficient to achieve City stormwater requirements with
423 respect to a number of cubic feet of annual stormwater
424 equivalent to the estimated number of cubic feet of annual
425 stormwater that will not achieve City stormwater
426 requirements as a consequence of the waiver. The
427 agreement shall be entered into by the applicant and City
428 prior to the recording of plats or, if no record plat is
429 required, prior to the issuance of the building permit.

431 Section 5. Stormwater Standards. Unless granted a waiver by City, applicants shall meet the
432 stormwater management standards established in this ordinance

433
434 Section 6. Requirements for Approval of Stormwater Management Concept Plan and
435 Stormwater Management Final Plan.¹⁶

¹⁶ It is not the intention of the committee to suggest that approval of the concept and final plans will involve a new, separate review process independent of the SWPPP review process. Rather, it is the intention of the drafting committee that the SWPPP, stormwater management concept plan and stormwater management final plan be consistent and perhaps even evolutionary states of a single overall plan to control stormwater pollution and run-off

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- 436 6.1 Stormwater Management Concept Plan: No application for development
437 will be accepted unless it includes a stormwater management concept plan
438 detailing in concept how runoff and associated water quality impacts
439 resulting from the development will be controlled or managed.
440 6.1.1 The stormwater management concept plan shall:
441 6.1.1.1 be prepared by a licensed professional engineer (PE) or
442 landscape architect; and
443 6.1.1.2 indicate whether stormwater will be managed on-site or
444 off-site and, if on-site, the general location and type of
445 BMPs, with clear citations to the Iowa Stormwater
446 Management Manual; and
447 6.1.1.3 include a signed and dated certification under penalty of
448 perjury by the preparer of the stormwater management
449 concept plan that it complies with all requirements of this
450 ordinance and the Iowa Stormwater Management Manual,
451 meets the submittal requirements outlined in the Iowa
452 Stormwater Management Manual, is designed to achieve
453 City stormwater requirements, and that City is entitled to
454 rely upon the certification as due diligence on the part of
455 City.
456 6.1.2 The stormwater management concept plan shall include sufficient
457 information (e.g., maps, hydrologic calculations, etc) to evaluate
458 the environmental characteristics of the project site, the potential
459 impacts of all proposed development of the site, both present and
460 future, on the water resources, and the effectiveness and
461 acceptability of the stormwater BMPs proposed for managing
462 stormwater generated at the project site. The intent of this
463 conceptual planning process is to determine the type of stormwater
464 BMPs necessary for the proposed project, and ensure adequate
465 planning for management of stormwater runoff from future
466 development. To accomplish this goal the following information
467 shall also be included in the stormwater management concept plan:
468 6.1.2.1 A map (or maps) indicating the location of existing and
469 proposed buildings, roads, parking areas, utilities, structural
470 stormwater management and sediment and erosion BMPs.
471 The map(s) will also clearly show proposed land use with
472 tabulation of the percentage of surface area to be adapted to
473 various uses; drainage patterns; locations of utilities, roads

from groundbreaking through the intended life of the Controls utilized on any site subject to this ordinance. Accordingly, it does not seem prudent to allow differing levels of expertise on the part of those who prepare a SWPPP as opposed to those who prepare a concept plan as opposed to those who prepare a final plan. By requiring that only licensed professional engineers or landscape architects may prepare and certify SWPPPs and concept plans and final plans, it is the hope of the committee that developer costs will thereby be reduced rather than increased because a single professional can (should) be in charge of drafting such plans from beginning to end. However, if a city decides that such consistency is unnecessary, it could require that any one or more of the various documents required by this ordinance be prepared by anyone “credentialed in a manner satisfactory to City.”

- 474 and easements; the limits of clearing and grading. A written
475 description of the site plan and justification of proposed
476 changes in natural conditions may also be required.¹⁷
477 6.1.2.2 Sufficient engineering analysis to show that the proposed
478 BMPs are capable of achieving City stormwater
479 requirements for the site in compliance with this ordinance.
480 6.1.2.3 A written or graphic inventory of the natural resources at
481 the site and surrounding area as it exists prior to the
482 commencement of the project and a description of the
483 watershed and its relation to the project site. This
484 description should include a discussion of soil conditions,
485 forest cover, topography, wetlands, and other native
486 vegetative areas on the site. Particular attention should be
487 paid to environmentally sensitive BMPs that provide
488 particular opportunities or constraints for development.
489 6.1.2.4 A written description of the required maintenance burden
490 for any proposed BMPs.
491 6.1.2.5 City may also require a concept plan to consider the
492 maximum development potential of a site under existing
493 zoning, regardless of whether the applicant presently
494 intends to develop the site to its maximum potential.
495 6.1.2.6 For development occurring on a previously developed site,
496 an applicant shall be required to include within the
497 stormwater management concept plan BMPs for controlling
498 existing stormwater runoff discharges from the site in
499 accordance with this Ordinance to the maximum extent
500 practicable.
501 6.1.3 The stormwater management concept plan shall be referred for
502 comment to all other interested agencies, and any comments must
503 be addressed in a stormwater management final plan.
504 6.1.4 No building, grading, or sediment control permit shall be issued
505 until a satisfactory stormwater management final plan, or a waiver
506 thereof, shall have undergone a review and been approved by City
507 after determining that the plan or waiver is consistent with the
508 requirements of this ordinance.
509 6.2 Stormwater Management Final Plan Requirements: After review of the
510 stormwater management concept plan, and modifications to that plan as
511 deemed necessary by City, a stormwater management final plan must be
512 submitted to the City for approval.
513 6.2.1 The stormwater management final plan, in addition to the
514 information included in the stormwater management concept plan,
515 shall:

¹⁷ This project description and site plan requirement includes information normally found in a SWPPP filed under the model COSESCO ordinance. Thus, it would not be unreasonable to accept a copy of the *current* SWPPP to satisfy this requirement.

- 516 6.2.1.1 be prepared by a licensed professional engineer (PE) or
517 landscape architect; and
518 6.2.1.2 indicate whether stormwater will be managed on-site or
519 off-site and, if on-site, the general location and type of
520 practices, with clear citations to the Iowa Stormwater
521 Management Manual; and
522 6.2.1.3 include a signed and dated certification under penalty of
523 perjury by the preparer of the stormwater management
524 concept plan that it complies with all requirements of this
525 ordinance and the Iowa Stormwater Management Manual,
526 meets the submittal requirements outlined in the Iowa
527 Stormwater Management Manual, is designed to achieve
528 City stormwater requirements, and that City is entitled to
529 rely upon the certification as due diligence on the part of
530 City.
- 531 6.2.2 The stormwater management final plan shall also include:
532 6.2.2.1 A detailed summary of how and why the stormwater
533 management final plan differs, if at all, from the stormwater
534 management concept plan previously submitted.
535 6.2.2.2 Contact Information, including but not limited to the name,
536 address, and telephone number of all persons having a legal
537 interest in the property and the tax reference number and
538 parcel number of the property or properties affected.
539 6.2.2.3 Topographic Base Map, consisting of a 1" = 200'
540 topographic base map of the site which extends a minimum
541 of _____feet beyond the limits of the proposed
542 development and indicates existing surface water drainage
543 including streams, ponds, culverts, ditches, and wetlands;
544 current land use including all existing structures; locations
545 of utilities, roads, and easements; and significant natural
546 and manmade features not otherwise shown.
547 6.2.2.4 Hydrologic and hydraulic design calculations for the pre-
548 development and post-development conditions for the
549 design storms specified in the Iowa Stormwater
550 Management Manual. Such calculations shall include (i)
551 description of the design storm frequency, intensity and
552 duration, (ii) time of concentration, (iii) Soil Curve
553 Numbers or runoff coefficients, (iv) peak runoff rates and
554 total runoff volumes for each watershed area, (v)
555 infiltration rates, where applicable, (vi) culvert capacities,
556 (vii) flow velocities, (viii) data on the increase in rate and
557 volume of runoff for the design storms referenced in the
558 Iowa Stormwater Management Manual, and (ix)
559 documentation of sources for all computation methods and
560 field test results.

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- 6.2.2.5 If a stormwater BMP depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil sites shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the BMP.
 - 6.2.2.6 A Maintenance and Repair Plan for all stormwater BMPs including detailed maintenance and repair procedures to ensure their continued efficient function. These plans will identify the parts or components of a stormwater BMP that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.
 - 6.2.2.7 A detailed Landscaping plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape architect, landscape designer, or by the soil water conservation district.
 - 6.2.2.8 Proof of permanent recorded Maintenance Easements that will ensure access to all stormwater BMPs at the site for the purpose of inspection and repair. These easements will be recorded with the stormwater management final plan and will remain in effect even with transfer of title to the property.
 - 6.2.2.9 Proof of a recorded Maintenance Agreement binding on all subsequent owners of land served by stormwater BMPs to ensure maintenance and repair in accordance with the specifications of this ordinance.
 - 6.2.2.10 Copies of all existing SWPPPs (as required by the City's COSESCO ordinance) current as of the date of submission of the stormwater management final plan for all construction activities related to implementing any on-site stormwater BMPs.
 - 6.2.2.11 Proof that the applicant has acquired all other applicable environmental permits for the site, or that no other such permits are required, prior to submission of the stormwater management final plan to the City.
- 6.3 Performance Bond/Security¹⁸

¹⁸ This section and section 6.4 have been the source of much discussion and some disagreement among committee members, and thus are offered with a caveat. Some on the committee thought the provisions onerous or unnecessary.

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- 6.3.1 City shall require the submittal of an installation performance security or bond prior to issuance of a permit in order to insure that the stormwater BMPs are installed by the permit holder as required by the approved stormwater management final plan.
 - 6.3.2 The amount of the installation performance security or bond shall be the total estimated construction cost of the stormwater BMPs approved under the permit, plus 25%. The installation performance security or bond shall contain forfeiture provisions for failure to complete work specified in the stormwater management final plan.
 - 6.3.3 The installation performance security or bond shall be released in full only upon submission of "as built plans" of all stormwater BMPs specified in the stormwater management final plan and written certification by a professional engineer that the stormwater BMPs have been installed in accordance with the approved stormwater management final plan and other applicable provisions of this ordinance. City will make a final inspection of stormwater BMPs to ensure compliance with the approved stormwater management final plan and the provisions of this ordinance. Provisions for a partial pro-rata release of the installation performance security or bond based on the completion of various development stages can be made at the discretion of City.
- 6.4 Maintenance Performance Security or Bond
- 6.4.1 City shall also require the submittal of a maintenance performance security or bond prior to issuance of a permit in order to insure that the stormwater BMPs are maintained in an effective state for a minimum of _____ years.¹⁹
 - 6.4.2 This maintenance performance security or bond may be released by the City upon a showing satisfactory to the City that:
 - 6.4.2.1 the permit holder has assigned to another *boni-fide* financially responsible legal entity, such as a home-owners' or similar organization organized under Iowa law, responsibility for maintenance of the stormwater BMPs in an effective state for the balance of the _____ year²⁰ period after assignment; and
 - 6.4.2.2 said assignee-legal-entity has fully accepted such responsibility in a written document that qualifies for recording and has been recorded in the county recorder's office under Iowa law; and

Others on the committee suggested that such bonding/security provisions are common for street, curb and gutter installations, and sometimes other kinds of infrastructure in developments, and that there is no reason to exempt stormwater management BMP installations. It will be up to each city to determine the advisability of deleting these provisions.

¹⁹ The duration of any performance bond or security should be determined by a city to parallel any such requirements for street, gutter or sewer infrastructure; a duration of twenty-five (25) years is not uncommon.

²⁰ See previous footnote.

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- 686 Section 8. Maintenance and Repair of Stormwater BMPs²²
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688 8.1 The applicant or owner of every site, or an assignee qualified pursuant to
689 Section 7, shall be responsible for maintaining as-built stormwater BMPs
690 in an effective state as determined in the sole judgment of City for _____
691 _____ years²³ from and after completion of construction.
692 8.2 Maintenance and Repair Easement: Prior to the issuance of any permit for
693 development involving any stormwater BMP, the applicant or owner of
694 the site must execute a maintenance and repair easement agreement that
695 shall be binding on all subsequent owners of land served by the
696 stormwater BMP. The agreement shall provide for access to the BMP and
697 the land it serves at reasonable times for periodic inspection by City or
698 City's designee and for regular or special assessments of property owners
699 to ensure that the BMP is maintained in proper working condition to meet
700 City stormwater requirements. The easement agreement shall be recorded
701 by City at the expense of the permit holder or property owners.
702 8.3 Maintenance Covenants:
703 8.3.1 Maintenance of all stormwater BMPs shall be ensured through the
704 creation of a formal maintenance covenant that must be approved
705 by City and recorded prior to the stormwater management final
706 plan approval. As part of the covenant, a schedule shall be
707 developed for when and how often maintenance will occur to
708 ensure proper function of the stormwater BMPs. The covenant
709 shall also include plans for periodic inspections to ensure proper
710 performance of the BMPs between scheduled cleanouts.
711 8.3.2 City, in lieu of a maintenance covenant, may but is not required to
712 accept dedication of any existing or future stormwater BMP to
713 include City responsibility for maintenance and repair, provided
714 that the maintenance and repair of such element will not impose an
undue burden on other City taxpayers who enjoy little if any

²² The provisions of this Section §8 contemplate private landowner responsibility for maintenance and repair of stormwater Controls in perpetuity. However, at least two other mechanisms might be considered by cities.

First, the installation, maintenance and repair of stormwater controls could be deemed analogous to however a city currently addresses the installation, maintenance and repair of other municipal infrastructure such as streets, curbs and gutters. Typically, developers are required to install public streets to city specifications and dedicate them to public use under such conditions as a city may require. If a developer chooses to install private streets intended for the private use of landowners served by the private streets which are not be dedicated to the public, then the landowners' collective responsibility for installation, maintenance and repair costs falls to the landowners' association or is guaranteed in some other manner specified by the city to prevent the use of public funds to maintain or repair private infrastructure. However, to the extent that non-maintenance or non-repair of a stormwater control can negatively impact the surrounding environment while non-maintenance or non-repair of a private street detrimentally affects only the landowners served thereby, the city should provide consequences for the failure of maintenance or repair of stormwater controls that would be unnecessary for the failure of maintenance or repair of a private street.

Second, responsibility the installation, maintenance and repair of stormwater controls might be vested in a stormwater utility that would function much like a municipal water, gas or electricity utility. The creation of such a utility is beyond the intended scope of this model ordinance.

²³ The duration of maintenance and repair obligations should be determined by a city to parallel any such requirements for street, gutter or sewer infrastructure; a duration of twenty-five (25) years is not uncommon.

- 715 benefit from the BMP, the BMP meets all the requirements of this
716 chapter, and the dedication includes adequate and perpetual access
717 and sufficient area, by easement or otherwise, for inspection and
718 regular maintenance.
- 719 8.4 Requirements for Maintenance Covenants: All stormwater BMPs must
720 undergo, at the minimum, an annual inspection to document maintenance
721 and repair needs and ensure compliance with the requirements of this
722 ordinance and accomplishment of its purposes. These needs may include
723 but are not limited to removal of silt, litter and other debris from all catch
724 basins, inlets and drainage pipes, grass cutting and vegetation removal,
725 and necessary replacement of landscape vegetation. Any maintenance or
726 repair needs detected must be corrected by the developer or entity
727 responsible under a written maintenance agreement under Section 6 in a
728 timely manner, as determined by City, and the inspection and maintenance
729 requirement may be increased as deemed necessary to ensure proper
730 functioning of the stormwater BMPs.
- 731 8.5 Inspection of Stormwater BMPs: Inspection programs may be established
732 on any reasonable basis, including but not limited to: routine inspections;
733 random inspections; inspections based upon complaints or other notice of
734 possible violations; inspection of drainage basins or areas identified as
735 higher than typical sources of sediment or other contaminants or
736 pollutants; inspections of businesses or industries of a type associated with
737 higher than usual discharges of contaminants or pollutants or with
738 discharges of a type which are more likely than the typical discharge to
739 cause violations of state or federal water or sediment quality standards or
740 the NPDES stormwater permit; and joint inspections with other agencies
741 inspecting under environmental or safety laws. Inspections may include,
742 but are not limited to: reviewing maintenance and repair records; sampling
743 discharges, surface water, groundwater, and material or water in
744 stormwater BMPs, and evaluating the condition of stormwater BMPs.
- 745 8.6 Right-of-Entry for Inspection: When any new stormwater BMP is installed
746 on private property, or when any new connection is made between private
747 property and a public stormwater management facility, sanitary sewer or
748 combined sewer, the property owner shall grant to City the right to enter
749 the property at reasonable times and in a reasonable manner for the
750 purpose of inspection. This includes the right to enter a property when
751 City has a reasonable basis to believe that a violation of this ordinance is
752 occurring or has occurred, and to enter when necessary for abatement of a
753 public nuisance or correction of a violation of this ordinance.
- 754 8.7 Records of Installation and Maintenance and Repair Activities: Parties
755 responsible for the operation and maintenance of stormwater BMPs shall
756 make records of the installation and of all maintenance and repairs, and
757 shall retain the records for at least years.²⁴ These records shall be made

²⁴ The duration of any records retention requirement should be determined by a city to parallel any such requirements for street, gutter or sewer infrastructure; a duration of twenty-five (25) years is not uncommon

758 available to City during inspection of the facility and at other reasonable
759 times upon request.
760 8.8 Failure to Maintain Stormwater BMPs: If a responsible party fails or
761 refuses to meet the requirements of the maintenance covenant or any
762 provision of this ordinance, City, after reasonable notice, may correct a
763 violation by performing all necessary work to place the BMP in proper
764 working condition. In the event that the stormwater BMP becomes a
765 danger to public safety or public health, City shall notify the party
766 responsible for maintenance of the stormwater BMP in writing. Upon
767 receipt of that notice, the responsible person shall have thirty (30) days to
768 effect maintenance and repair of the stormwater BMP in an approved
769 manner. After proper notice, City may assess, jointly and severally, the
770 owner(s) of the stormwater BMP or the property owners or the parties
771 responsible for maintenance under any applicable written agreement for
772 the cost of repair work and any penalties; and the cost of the work shall be
773 a lien on the property, or prorated against the beneficial users of the
774 property, and may be placed on the tax bill and collected as ordinary
775 taxes.
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777 Section 9. Enforcement and Penalties.

778 9.1 Violation of any provision of this ordinance may be enforced by civil action
779 including an action for injunctive relief. In any civil enforcement action,
780 administrative or judicial, the City shall be entitled to recover its attorneys'
781 fees and costs from a person who is determined by a court of competent
782 jurisdiction to have violated this ordinance.
783 9.2 Violation of any provision of this ordinance may also be enforced as a
784 municipal infraction within the meaning of §364.22, pursuant to the City's
785 municipal infraction ordinance.²⁵
786 9.3 Enforcement pursuant to this section shall be undertaken by City upon the
787 advice and consent of the City Attorney or other counsel employed by City.
788 9.4 Restoration of lands: Any violator may be required to restore land to its
789 undisturbed condition. In the event that restoration is not undertaken
790 within a reasonable time after notice, City may take necessary corrective
791 action, the cost of which shall become a lien upon the property until paid.
792 9.5 Holds on Occupation Permits: Occupancy permits shall not be granted
793 until all stormwater BMPs have been inspected and approved by City.
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²⁵ 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.

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- 799 Section 10. Appeal
800 10.1 Administrative decisions by city staff and enforcement actions may be
801 appealed by the developer or property owner to the city council pursuant to
802 the following rules:²⁶
803 10.1.1 The appeal must be filed in writing with the city clerk within five (5)
804 business days of the decision or enforcement action.
805 10.1.2 The written appeal shall specify in detail the action appealed from,
806 the errors allegedly made by the enforcement officer giving rise to
807 the appeal, a written summary of all oral and written testimony the
808 applicant intends to introduce at the hearing, including the names
809 and addresses of all witnesses the applicant intends to call, copies of
810 all documents the applicant intends to introduce at the hearing, and
811 the relief requested.
812 10.1.3 The enforcement officer shall specify in writing the reasons for the
813 enforcement action, a written summary of all oral and written
814 testimony the enforcement officer intends to introduce at the
815 hearing, including the names and addresses of all witnesses the
816 enforcement officer intends to call, and copies of all documents the
817 enforcement officer intends to introduce at the hearing.
818 10.1.4 The city clerk shall notify the applicant and the enforcement officer
819 by ordinary mail, and shall give public notice in accordance with
820 Chapter 21, Iowa Code, of the date, time and place for the regular or
821 special meeting of the city council at which the hearing on the
822 appeal shall occur. The hearing shall be scheduled for a date not less
823 than four (4) nor more than twenty (20) days after the filing of the
824 appeal. The rules of evidence and procedure, and the standard of
825 proof to be applied, shall be the same as provided by Chapter 17A,
826 Code of Iowa. The applicant may be represented by counsel at the
827 applicant's expense. The enforcement officer may be represented by
828 the city attorney or by an attorney designated by the city council at
829 City expense.
830 10.2 The decision of the city council shall be rendered in writing and may be
831 appealed to the Iowa District Court.
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²⁶ 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.

MODEL FLOODPLAIN MANAGEMENT ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF _____, IOWA, ENACTING A NEW CHAPTER _____, FLOODPLAIN MANAGEMENT ORDINANCE, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, IOWA, that the Municipal Code of the City of _____, Iowa, is amended as follows:

Section 1. That Chapter _____, Municipal Code, City of _____, Iowa, be repealed, and the following new Chapter ____ be enacted in lieu thereof:

"CHAPTER ____ FLOODPLAIN MANAGEMENT ORDINANCE"

01 LEGAL AUTHORITY, FINDINGS OF FACT AND PURPOSE

(a) **Legal Authority.** Chapter 364 of the Code of Iowa grants cities the authority, except as expressly limited by the Constitution and if not inconsistent with the laws of the General Assembly, to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

(b) **Findings of Fact.**

1. The flood hazard areas of the City of _____ are subject to inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the peace, safety, health, welfare, comfort, and convenience of its residents.

2. These flood losses, hazards, and related adverse effects are caused by:

A. The occupancy of flood hazard areas by uses vulnerable to flood damages which create hazardous conditions as a result of being inadequately elevated or otherwise protected from flooding.

B. The cumulative effect of development in the floodplain causing increases in flood heights and velocities.

3. This chapter relies upon engineering methodology for analyzing flood hazards which meet or exceed standards established by the National Flood Insurance Program.

(c) **Statement of Purpose.** It is the purpose of this chapter to protect and preserve the rights, privileges and property of the City of _____ and its residents and to preserve and improve the peace, safety, health, welfare, and comfort and convenience of its residents by minimizing those flood losses with provisions designed to:

1. Maintain or reduce flood peaks, flood stage, flood velocity, erosion, and sedimentation in public works projects, development, and other activities.
2. Restrict or prohibit uses which are dangerous to health, safety or property in times of flood or which cause excessive increases in flood heights or velocities.
3. Require that uses vulnerable to floods, including public utilities which serve such uses, be protected against flood damage at the time of initial construction.
4. Protect individuals from buying lands which are unsuited for intended purposes because of flood hazard.
5. Assure that eligibility is maintained for any property owner in the City to purchase flood insurance through the National Flood Insurance Program.
6. Maximize the benefits of floodplain lands, such as natural flood and erosion control, ecological productivity, and recreation.

02 DEFINITIONS

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

100-Year Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year. Also see "100-Year Flood".

Base Flood Elevation (BFE): The water surface elevation of the 100-year flood.

Basement: Any enclosed area having its floor below grade level on all sides.

City: The City of _____, Iowa.

Development: Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. "Development" does not include "minor projects" or "routine maintenance of existing buildings and facilities" as defined in this section. It also does not include gardening, plowing, and similar practices that do not involve filling and/or grading.

Existing Factory-Built Home Park or Subdivision: An existing factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either the final site grading or the pouring of concrete pads) that is completed before the effective date of the first floodplain management regulations adopted by the City.

Factory-built Home: Any structure, designed for residential use, which is wholly or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation, on a building site. For the purpose of this chapter factory-built homes include mobile homes, manufactured homes and modular homes and also include park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

Proposed Factory-Built Home Park or Subdivision: A proposed factory-built home park or subdivision for which the construction of facilities for servicing the lots on which the factory-built homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either the final site grading or the pouring of concrete pads) that was or is to be completed after the effective date of the first floodplain management regulations adopted by the City.

FEMA: The Federal Emergency Management Agency.

Flood: A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of streams or rivers or from the unusual and rapid runoff of surface waters from any source.

Flood Elevation: The elevation floodwaters would reach at a particular site during the occurrence of a specific flood. For instance, the 100-year flood elevation is the elevation of floodwaters related to the occurrence of the 100-year flood.

Flood (or Floodway) Fringe: The FEMA-mapped floodplain outside of the Floodway.

Flood Insurance Rate Map (FIRM): The Flood Insurance Rate Map effective April 5, 2010 and any revisions thereto, on which FEMA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study: The Flood Insurance Study for _____ County Iowa, including _____, published by FEMA in conjunction with the FIRM and containing background data such as base flood discharges and water surface elevations used to prepare the FIRM.

Floodplain: Lands which are subject to a one percent or greater chance of flooding in any given year shown as Zones A and AE on the Flood Insurance Rate Maps issued by FEMA for _____ County, Iowa and incorporated areas, as amended. Also referred to as the "100-year floodplain".

Floodplain Management: An overall program of corrective and preventive measures for reducing flood damages and promoting the wise use of floodplains, including but not limited to emergency preparedness plans, flood control works, flood-proofing and floodplain management regulations.

Flood-prone: Lands subject to a one percent or greater chance of flooding in any given year, as determined by hydrologic and hydraulic studies completed by the City or other government agency, or other acceptable source as approved by the City where this is the best available information.

Flood-proofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway: The channel of a river or other watercourses and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Historic Structure: Any structure that is:

1. Listed individually in the National Register of Historic Places, maintained by the Department of Interior, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing of the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in _____ with historic preservation programs that have been certified by either (i) an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in states without approved programs.

Letter of Map Change (LOMC): A determination document issued by FEMA that officially revises the FIRM based on updated information, whether improved data or topography changes created by fill placement. This includes Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), Letter of Map Revision Based on Fill (LOMR-F), Conditional Letter of Map Revision (CLOMR), and Conditional Letter of Map Revision Based on Fill (CLOMR-F).

Lowest Floor: The floor of the lowest enclosed area in a building including a basement except when all the following criteria are met:

1. The enclosed area is designed to flood to equalize hydrostatic pressure during floods with walls or openings that satisfy the provisions of this chapter; and
2. The enclosed area is unfinished (not carpeted, drywall, etc.) and used solely for low damage potential uses such as building access, parking or storage; and
3. Machinery and service facilities (e.g., hot water heater, furnace, electrical service) contained in the enclosed area are located at least one foot above the 100-year flood level; and
4. The enclosed area is not a "basement "as defined in this section. In cases where the lowest enclosed area satisfies criteria 1, 2, and 3 above, the lowest floor is the floor of the next highest enclosed area that does not satisfy the criteria above.

Market Value: The value established by the City Assessor for that property.

Minor Project: Small development activities (except for filling, grading and excavating) valued at less than \$500.

New Construction (New Buildings, Factory-built Home Parks): Those structures or development for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter.

Non-substantial improvement: Any improvement that does not meet the definition of substantial improvement, as defined in this section.

Qualified engineer: A licensed professional engineer in the State of Iowa who, by reason of training and experience, is considered knowledgeable and has demonstrated competence in hydrology and hydraulics and their application to the flood insurance study.

Recreational Vehicle (under Floodplain Management Ordinance only): A vehicle which is:

- (a) built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) designed to be self-propelled or permanently towable by a light duty truck;
- and
- (d) not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Flood Protection Elevation (RFPE): An elevation at least one foot above the Base Flood Elevation plus any increases in flood elevation caused by encroachments on the flood plain that result from designation of a floodway.

Routine Maintenance of Existing Buildings and Facilities: Repairs necessary to keep a structure in a safe and habitable condition that do not trigger a building permit, provided they are not associated with a general improvement of the structure or repair of a damaged structure. Such repairs include:

- (a) Normal maintenance of structures such as re-roofing, replacing roofing tiles and replacing siding;
- (b) Exterior and interior painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work;
- (c) Basement sealing;

- (d) Repairing or replacing damaged or broken window panes;
- (e) Repairing plumbing systems, electrical systems, heating or air conditioning systems and repairing wells or septic systems.

Special Flood Hazard Area (SFHA): The land in the floodplain subject to a one percent or greater chance of flooding in any given year.

Start of construction: The first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a substantial improvement, the actual start of construction shall mean the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimension of the building.

Structure: Anything constructed or erected on the ground or attached to the ground, including, but not limited to, buildings, factories, sheds, cabins, factory-built homes, storage tanks, and other similar uses.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to a before-damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial improvement: Any improvement to a structure which satisfies one or more of the following criteria:

1. Any reconstruction, rehabilitation, addition or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either before the "start of construction" of the improvement whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

- B. Any alteration will not preclude the structures continued designation as a "historic structure."

2. Any addition which increases the original floor area of a building by 25 percent or more. All additions constructed after June 1, 1987, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

3. The cumulative cost of any repairs or improvements undertaken over a period of five years equals or exceeds fifty percent of the market value of the structure.

Variance: A grant of relief from the terms of a floodplain management regulation.

Violation: Failure to be fully compliant with the floodplain management regulations as set forth in this chapter. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance as required is presumed to be in violation until such time as that documentation is provided.

03 GENERAL PROVISIONS

(a) **Lands to Which Regulations Apply.** These floodplain management regulations shall apply to Special Flood Hazard Areas. The Flood Insurance Rate Map (FIRM) for _____ County and Incorporated Areas, City of _____, Panels _____, dated _____, which were prepared as part of the _____ County Flood Insurance Study shall be used to identify such flood hazard areas and all areas shown thereon to be within the boundaries of the 100-year flood shall be considered as having significant flood hazards. Where uncertainty exists with respect to the precise location of the 100-year flood boundary, the location shall be determined on the basis of the 100- year flood elevation at the particular site in question. The _____ County Flood Insurance Study is hereby adopted by reference and is made a part of this chapter for the purpose of administering floodplain management regulations.

(b) **Compliance.** No structure or land shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations which apply to uses within the jurisdiction of this chapter.

(c) **Review and Approval.** Any proposed development within the floodplain shall be reviewed and approved by the City as part of the Floodplain Development Application process.

(d) **Abrogation and Greater Restrictions.** It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are repealed to the extent of the inconsistency only.

(e) **Interpretation.** In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

(f) **Warning and Disclaimer of Liability.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and

scientific methods of study. Larger floods may occur. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside the regulated areas or that uses permitted within the regulated areas will be free from flooding or flood damages. This chapter shall not create liability on the part of _____ or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

04 FLOODWAY, FLOODPLAIN AND FLOOD-PRONE AREA REQUIREMENTS

(a) Development of any land in the floodway shall cause no increase in the water surface elevation of the 100-year flood.

(b) Development of any land in the floodplain, flood-prone area, or floodway shall not:

1. Result in any new or additional expense to any person or agency other than the developer for flood protection or for lost environmental stream uses or functions;
2. Pose any new or additional increase in flood velocity or impairment of the hydrologic and hydraulic functions of streams and floodplains;

(c) Analysis and design of floodplain development shall consider existing and ultimate watershed and land use conditions, with and without the proposed development. The analysis of floodway, floodplain, and flood-prone areas shall utilize the most current flood studies, hydrologic and hydraulic models provided by FEMA, the City, or other source approved by the City. If a study of the affected area does not exist, the land developer shall submit an analysis prepared by a qualified engineer for City review.

(d) The location, grade, and flood-proofing of all proposed utilities which are to be extended into or through any portion of the floodplain or flood-prone area to serve the proposed development shall be approved by the City, prior to the extension of such utilities into the floodplain or flood-prone area.

(e) Watercourse alterations or relocations (channel changes and modifications) must be designed to maintain the flood-carrying capacity within the altered or relocated portion. In addition, such alterations or relocations must be approved by the Iowa Department of Natural Resources.

(f) Any fill allowed in the floodway must be shown to have some beneficial purpose and shall be limited to the minimum amount necessary.

(g) Pipeline river or stream crossings shall be buried in the streambed and banks or otherwise sufficiently protected to prevent rupture due to channel degradation and meandering or due to the action of flood flows.

(h) No use shall affect the capacity or conveyance of the channel or floodway or any tributary to the main stream, drainage ditch, or any other drainage facility or system.

(i) Special Provisions for Shallow Flooding Areas: In addition to the General Floodplain Standards, uses within shallow flooding areas must meet the following applicable standards.

1. In shallow flooding areas designated as an AO Zone on the Flood Insurance Rate Map (FIRM), the minimum floodproofing/flood protection elevation shall be equal to the number of feet as specified on the FIRM (or a minimum of 2.0 ft. if no number is specified) above the highest natural grade adjacent to the structure.
2. In shallow flooding areas designated as an AH Zone on the FIRM, the minimum floodproofing/flood protection elevation shall be equal to the elevation as specified on the FIRM.

05 STRUCTURES IN FLOODPLAIN

(a) All structures shall be:

1. Adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including buoyancy.
2. Constructed with materials and utility equipment resistant to flood damage.
3. Constructed by methods and practices that minimize flood damage.
4. Issued all other necessary permits from federal, state and local government agencies including approval when required from the Iowa Department of Natural Resources.

(b) All new or substantially improved residential structures shall have the lowest floor, including basement, elevated a minimum of one foot above the 100-year flood level. Construction shall be upon compacted fill which shall, at all points, be no lower than one foot above the 100-year flood level and extend at such elevation at least 18 feet beyond the limits of any structure erected thereon. Alternate methods of elevating (such as piers) may be allowed, where existing topography, street grades, or other factors preclude elevating by fill. In such cases, the methods used must be adequate to support the structure as well as withstand the various forces and hazards associated with flooding. All new residential structures shall be provided with a means of access which will be passable by wheeled vehicles during the 100-year flood.

(c) All new or substantially improved non-residential buildings shall have the first floor (including basement) elevated a minimum of one foot *above* the 100-year flood level, or together with attendant utility and sanitary systems, be flood-proofed to such a level. When flood-proofing is utilized, a licensed professional engineer or licensed professional architect registered in the State of Iowa shall certify that the flood-proofing methods used are in accordance with accepted standards of practice for withstanding the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100- year flood; and that the structure, below the 100-year flood level, is watertight with walls substantially impermeable to the passage of water. A record of the certification indicating the specific elevation (in relation to North American Vertical Datum of 1988 (NAVD 1988)) to which any structures are flood-proofed shall be maintained by the Administrator.

(d) New and Substantially Improved Structures.

1. Fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or low damage potential storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer registered in the State of Iowa or meet or exceed the following minimum criteria:

A. A minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.

B. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

C. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

2. New and substantially improved structures must be designed (or modified) and adequately anchored to resist flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

3. New and substantially improved structures must be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(e) Factory-built Homes.

1. Factory-built homes placed or substantially improved inside or outside of new, existing, or expanded factory-built home parks or subdivisions shall be ground anchored to resist flotation, collapse, or lateral movement. Specific requirements are that:

A. Over-the-top ties provided at each of the 4 corners of the factory-built home with 2 additional ties per side at intermediate locations for factory-built homes 50 feet or more in length or one such tie for factory-built homes less than 50 feet in length.

B. Frame ties provided at each corner of the home with 5 additional ties per side at intermediate points for factory-built homes 50 feet or more in length or 4 such ties for homes less than 50 feet in length.

C. All components of the anchoring system capable of carrying a force of 4800 pounds.

D. Any additions to the factory-built home shall be similarly anchored.

E. Chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade.

2. Factory-built homes shall be elevated on a permanent foundation such that the lowest floor of the structure is a minimum of 1 foot above the 100-year flood level.

(f) Utility and Sanitary Systems.

1. All new and replacement water and wastewater systems shall be designed to minimize and eliminate infiltration of floodwaters into the system as well as the discharge of effluent into floodwaters. Water and wastewater treatment facilities shall be provided with a level of flood protection equal to or greater than 3 feet above the 100-year flood elevation:

A. On-site waste disposal systems shall be located or designed to avoid impairment to the system or contamination from the system during flooding.

B. Utilities such as gas or electrical systems shall be located and constructed to minimize or eliminate flood damage to the system and the risk associated with such flood damaged or impaired systems.

(g) Existing or future storage of materials and equipment that are flammable, explosive or injurious to human, animal or plant life is prohibited unless elevated a minimum of 1 foot above the 100-year flood level. Other material and equipment must be either be similarly elevated or

1. not be subject to major flood damage and be anchored to prevent movement due to floodwaters or

2. be readily removable from the area within the time available after flood warning.

(h) Flood control structural works such as levees, flood walls, etc. shall provide, at a minimum, protection from a 100-year flood with a minimum of 3 feet of design freeboard and shall provide for adequate interior drainage. In addition, structural flood control works shall be approved by the Iowa Department of Natural Resources.

(i) No use shall affect the capacity or conveyance of the channel or floodway of any tributary to the main stream, drainage ditch, or other drainage facility or system.

U) Subdivisions (including factory-built home parks and subdivisions) shall be consistent with the need to minimize flood damages and shall have adequate drainage provided to reduce exposure to flood damage. Subdivision development (including the installation of public utilities) shall meet the applicable performance standards. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that all public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage. Subdivision proposals intended for residential development shall provide all lots with a means of vehicular access that will remain dry during occurrence of the 100-year flood. Proposals for

subdivisions greater than five (5) acres or fifty (50) lots (whichever is less) shall include 100-year flood elevation data for those areas located within the area of significant flood hazard.

(k) Detached Accessory Structures

1. New detached accessory structures are prohibited in the floodway. Accessory structures shall meet the following standards if constructed or placed in the floodplain:

- A. Accessory structures shall not be used for human habitation;
- B. Accessory structures and uses shall be designed to have a low flood damage potential;
- C. Accessory structures shall be placed on the building site and constructed so as to offer the minimum resistance to the flow of floodwaters.
- D. Accessory structures shall be firmly anchored to prevent flotation which may result in damage to other structures.
- E. A Structure's service facilities such as electrical and heating equipment shall be elevated or flood-proofed to at least one foot above the 100-year flood level.
- F. The structure shall not exceed 600 gross square feet in area.

(l) Recreational Vehicles

1. Recreational Vehicles are exempt from the requirements of Section 05 (e) of this Ordinance regarding anchoring and elevation of factory-built homes when the following criteria are satisfied:

- A. The recreational vehicle shall be located on the site for less than 180 consecutive days, and,
- B. The recreational vehicle must be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system and is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

2. Recreational vehicles that are located on the site for more than 180 consecutive days or are not ready for highway use must satisfy requirements of Section 328.05 (e) of this Ordinance regarding anchoring and elevation of factory-built homes.

(m) Where floodway data has been provided in the Flood Insurance Study, such data shall be used to define the floodway limits. Where no floodway data has been provided, the Iowa Department of Natural Resources shall be contacted to provide a floodway delineation.

(n) In addition to the general floodplain standards, all uses within the floodway shall meet the following applicable standards.

1. Consistent with the need to minimize flood damage.
2. Use construction methods and practices that will minimize flood damage.
3. Use construction materials and utility equipment that are resistant to flood damage.
4. Structures, buildings and sanitary and utility systems, if permitted, shall meet the applicable general floodplain standards and shall be constructed or aligned to present the minimum possible resistance to flood flows.
5. Buildings, if permitted, shall have low flood damage potential and shall not be for human habitation.
6. Storage of materials or equipment that are buoyant, flammable, explosive or injurious to human, animal or plant life is prohibited. Storage of other material may be allowed if readily removable from the floodway within the time available after flood warning.

06 EXCEPTIONS

(a) Exceptions are provided to Section 04 for the following:

1. Residential non-substantial improvements.
2. Flood-proofing of existing buildings, other than filling.
3. Minor projects clearly having negligible impact, such as street resurfacing and rehabilitation, certain utility infrastructure and appurtenances (e.g. hydrants, poles, manholes, underground pipes), bridge/culvert rehabilitation projects, landscaping, stream rehabilitation, and minor water quality features which typically pose no increase fill or flood potential that would increase flood elevations are not required to submit study information to document no net rise unless specifically required by the Public Works Department.
4. Public stream crossing structures.
5. Storm water detention/retention facilities, ponds, streambank stabilization, and wetlands.
6. A historic structure is not required to meet elevation or flood-proofing requirements when it is substantially improved, provided the modifications do not preclude the structure's continued designation as a historic structure.

07 ADMINISTRATION

(a) Duties and Responsibilities of Administrator.

1. The Floodplain Manager of the City of _____ shall administer and enforce the provisions of this chapter and will herein be referred to as the Administrator.

2. Duties and responsibilities of the Administrator shall include, but not necessarily be limited to the following:

- A. Review all floodplain development permit applications to ensure that the provisions of this Ordinance will be satisfied.
- B. Review all floodplain development permit applications to ensure that all necessary permits have been obtained from federal, state or local governmental agencies.
- C. Obtain and maintain a record of:
 - (1) The elevation of the lowest floor of all new or substantially improved buildings using North American Vertical Datum of 1988 (NAVD88)
 - (2) The elevation to which new or substantially improved structures have been flood-proofed.
- D. Notify adjacent communities and/or counties and the Iowa Department of Natural Resources prior to any proposed alteration or relocation of a watercourse and submit evidence of such notifications to the Federal Emergency Management Agency.
- E. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- F. Keep a record of all permits, appeals, variances and such other transactions and correspondence pertaining to the administration of this ordinance.
- G. Charge and receive such reasonable fees, as set forth by the City Council by resolution from time to time, to help defray administrative costs related to floodplain/floodway development permits, variances and amendments.

(b) Floodplain Development Permit Required.

1. A floodplain development permit issued by the Administrator shall be secured prior to initiation of any floodplain development (any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations) including the placement of factory-built homes.

2. Application for a floodplain development permit shall be made on forms supplied by the Administrator and shall include the following information:

- A. Description of the work to be covered by the permit for which application is to be made.
- B. Description of the land on which the proposed work is to be done (i.e. lot, block, tract, street address or similar description) that will readily identify and locate the work to be done.
- C. Indication of the use or occupancy for which the proposed work is intended.
- D. Elevation of the 100-year flood.
- E. Elevation of the lowest floor (including basement) of buildings or of the level to which a building is to be flood-proofed.
- F. For buildings being improved or rebuilt, the estimated cost of improvements and market value of the building prior to the improvements.
- G. Such other information as the Administrator deems reasonably necessary for the purpose of this ordinance.

3. The Administrator shall, within a reasonable time, make a determination as to whether the proposed floodplain development meets the applicable standards of this chapter and shall approve or disapprove the application. For disapprovals, the applicant shall be informed, in writing, of the specific reasons therefore.

4. Floodplain Development Permits based on approved plans and applications authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this chapter. The applicant shall be required to submit certification by a licensed architect, licensed engineer or licensed land surveyor, as appropriate, registered in the State of Iowa, that the finished fill, building floor elevations, flood-proofing, or other flood protection measures were accomplished in compliance with the provisions of this chapter, prior to the use or occupancy of any structure.

5. All other necessary permits required by Federal or State Law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334 shall be received prior to the Administrator's approval of Floodplain Development Permits, including approval when required from the Iowa Department of Natural Resources.

08 VARIANCE

(a) The Building Code Board of Appeals may authorize, upon request in specific cases, such variances from the terms of this chapter that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will

result in unnecessary hardship.

(b) No variance shall be granted for any development within the floodway which would result in any increase in flood heights during the occurrence of the 100-year flood. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.

(c) Variances shall only be granted upon:

1. A showing of good and sufficient cause.
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant.
3. A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public.

(d) Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this chapter, the applicant shall be notified in writing over the signature of the Administrator that:

1. The issuance of a variance will result in increased premium rates for flood insurance.
2. Such construction increases risks to life and property.

(f) All variances granted shall have the concurrence or approval of the Iowa Department of Natural Resources.

(g) In passing upon applications for variances, the Building Code Board of Appeals shall consider all relevant factors specified in other sections of this chapter and:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept on to other land or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

5. The importance of the services provided by the proposed facility to the City.
6. The requirements of the facility for a floodplain location.
7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
10. The safety of access to the property in times of flood for ordinary and emergency vehicles.
11. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwater expected at the site.
12. The cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities (sewer, gas, electrical and water systems), facilities, streets and bridges.
13. Such other factors which are relevant to the purpose of this chapter.

(h) Upon consideration of the factors listed above, the Building Code Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter. Such conditions may include, but not necessarily be limited to:

1. Modification of waste disposal and water supply facilities.
2. Limitation of periods of use and operation.
3. Imposition of operational controls, sureties, and deed restrictions.
4. Requirements for construction of channel modifications, dikes, levees, and other protective measures, provided such are approved by the Iowa Department of Natural Resources and are deemed the only practical alternative to achieving the purpose of this chapter.
5. Flood-proofing measures.

(i) Variances will not be granted for the following circumstances:

1. Perceived loss in property value.
2. Requirements inconvenience the property owner.
3. Lack of funds to bring property into compliance.

4. Property will look different from other nearby properties.

09 APPEAL PROCESS

(a) **Appeal to City Council.** Any person adversely affected by any decision made under this Ordinance may appeal to the City Council by filing a written notice of such appeal with the City Clerk setting forth the issues within 20 days of said decision.

(b) **Appeal to District Court.** Any person adversely affected by any decision of the City Council may appeal to the Iowa District Court for _____ County by filing a petition with said court and serving a copy thereof on the City of _____, Iowa, in the same manner as the service of process in a civil action within 30 days of said decision..

(c) **Review by Other Agency.** If any decision by the City needs the review or approval of any State and/or Federal agency, then the times for appeal herein shall not begin to run until such review or approval has been received by the City of _____, Iowa.

10 ENFORCEMENT

(a) In addition to any other actions, the Administrator, upon determination of a violation, shall request a denial of flood insurance from the Federal Insurance Administration. The request shall consist of;

1. Name of the property owner and address or legal description of the property sufficient to confirm its identity or location.
2. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance.
3. A clear statement that the public body making the declaration has authority to do so and a citation to that authority.
4. Evidence that the property owner has been provided notice of the violation and prospective denial of insurance.
5. A clear statement that the declaration is being submitted pursuant to Section 1316, National Flood Insurance Act of 1968, as amended.

11 NON-CONFORMING USES

(a) A structure or the use of a structure or premises which was lawful before the passage or amendment of this Ordinance, but which is not in conformity with the provisions of this Ordinance, may be continued subject to the following conditions:

1. If such use is discontinued for six (6) consecutive months, any future use of the building premises shall conform to this Ordinance.

2. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

(b). If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, unless it is reconstructed in conformity with the provisions of this Ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, provided that the alteration shall not preclude its continued designation.

12 AMENDMENTS

(a) The regulations and standards set forth in this chapter may periodically be amended, supplemented, changed, or repealed. No amendment, supplement, change, or modification shall be undertaken without prior review of the Iowa Department of Natural Resources."

Section 2. It is the intention of the Council that each section, paragraph, sentence, clause, and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part thereof other than that affected by such decision.
2010.

Section 3. This Ordinance shall be in full force and effect beginning on _____.

Section 4. The changes as provided in this Ordinance shall be made a part of the replacement pages of the Municipal Code, City of _____, Iowa, and made a part of said Code as provided by law.

Section 5. All ordinances or parts of ordinances in conflict with any provision of this Ordinance are hereby repealed.

Section 6. Any person, firm or corporation violating any provision, section or paragraph of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine of at least \$65.00 but not more than \$625.00, or be imprisoned for not more than 30 days, or both. That each day a violation occurs shall constitute a separate offense.

Additionally, violation of any provision, section, or paragraph of this ordinance constitutes a municipal infraction subject to all the penalties and other relief provisions as set forth in Iowa Code Section 364.22 (2007, as amended).

As part of the penalty provision of this Ordinance, Sections _____ and _____ of the Municipal Code, City of _____, Iowa, are adopted, and shall apply to this Ordinance, and supersede the penalty clause as above provided when this Ordinance is incorporated into and made a part of the Municipal Code, City of _____, Iowa, and such penalty clause is herewith adopted and made applicable to all violations of this Ordinance.

Introduced this ____ day of _____, 20__.

Passed this ____ day of _____, 20__.

_____, Mayor

Attest:

_____, City Clerk

[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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76
77

78 SECTION 1. FINDINGS:
79

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.

119
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
287
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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1 **IOWA ILLICIT DISCHARGE MODEL ORDINANCE 6/6/05**

2
3
4 ORDINANCE NO. _____

5
6 ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY¹ OF _____
7 _____, BY ADDING CHAPTER _____,
8 "ILLICIT DISCHARGE TO STORM SEWER SYSTEM"

9
10 Section 1. THE CODE OF ORDINANCES, CITY OF _____
11 _____, is hereby amended to add CHAPTER _____ "ILLICIT
12 DISCHARGE TO STORM SEWER SYSTEM," in the form attached hereto.

13
14 Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are
15 hereby repealed.

16
17 Section 3. Severability Clause. If any section, provision or part of this ordinance shall be
18 adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the
19 ordinance as a whole or any section, provision or part thereof not adjudged invalid or
20 unconstitutional.

21
22 Section 4. Effective Date. This ordinance shall be effective from and after the final passage,
23 approval and publication as provided by law.

24
25 PASSED AND APPROVED this _____ day of _____, 20 _____.

26
27
28
29 _____
30 Mayor

31
32
33 (SEAL)

34
35 ATTEST:

36
37
38
39 _____
40 City Clerk

41
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43
44 APPROVED AS TO FORM:

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.

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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.

73 CHAPTER _____, ILLICIT DISCHARGE TO STORM SEWER SYSTEM
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75
76

77 SECTION 1. FINDINGS:

- 78 1.1. The U.S.EPA’s National Pollutant Discharge Elimination System
79 (“NPDES”) permit program (Program) administered by the Iowa
80 Department of Natural Resources (“IDNR”) requires that cities meeting
81 certain demographic and environmental impact criteria obtain from the
82 IDNR an NPDES permit for the discharge of storm water from a
83 Municipal Separate Storm Sewer System (MS4) (MS4 Permit).³ The City
84 of _____ (City) is subject to the Program and is
85 required to obtain, and has obtained, an MS4 Permit; the City’s MS4
86 Permit is on file at the office of the city clerk and is available for public
87 inspection during regular office hours.
- 88 1.2. As a condition of the City’s MS4 Permit, the City is obliged to adopt and
89 enforce an ILLICIT DISCHARGE TO STORM SEWER SYSTEM
90 ordinance.
- 91 1.3. No state or federal funds have been made available to assist the City in
92 administering and enforcing the Program. Accordingly, the City shall fund
93 its operations under this ordinance entirely by charges imposed on the
94 owners of properties which are made subject to the Program by virtue of
95 state and federal law, and/or other sources of funding established by a
96 separate ordinance.⁴
- 97 1.4. Terms used in this ordinance shall have the meanings specified in the
98 Program.
99

100 SECTION 2. ILLICIT DISCHARGES PROHIBITED

- 101 2.1 For purposes of this ordinance, a “responsible party” is one or more
102 persons that control or are in possession of or own property. Responsible
103 parties shall be jointly and severally responsible for compliance with this
104 ordinance and jointly and severally liable for any illicit discharge from the
105 property controlled, possessed or owned. For purposes of this ordinance,
106 “property” includes but is not limited to real estate, fixtures, facilities and
107 premises of any kind located upon, under or above the real estate.
- 108 2.2 Nothing in this ordinance shall be deemed to relieve a responsible party
109 subject to an IDNR-issued industrial discharge permit or any other federal,
110 state or City permit, statute, ordinance or rule from any obligation
111 imposed by such permit, statute, ordinance or rule if any such obligation is
112 greater than any obligation imposed by this ordinance.

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>.

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 administrative cost recovery mechanism suggested in ¶5.9 below.

- 113 2.3 Any discharge into the City's storm sewer system prohibited by the City's
114 MS4 Permit, the terms of which are hereby incorporated by reference, shall
115 be deemed an "illicit discharge" in violation of this ordinance.
116 2.4 Sediment pollution originating from excessive erosion rates on a
117 construction site not otherwise subject to the City's COSESCO ordinance or
118 sediment pollution entering a municipal storm sewer that causes a water
119 quality violation as determined by the DNR shall be deemed an illicit
120 discharge in violation of this ordinance.⁵
121

122 SECTION 3. ILLICIT CONNECTIONS PROHIBITED

- 123 3.1 For purposes of this ordinance, an "illicit connection" to the City's storm
124 sewer system is any physical connection or other topographical or other
125 condition, natural or artificial, which is not specifically authorized by
126 ordinance or written rule of the City, which causes or facilitates, directly or
127 indirectly, an illicit discharge.
128 3.2 The construction, use, maintenance or continued existence of any illicit
129 connection shall constitute a violation of this ordinance.
130 3.3 This prohibition expressly includes, without limitation, illicit connections
131 made in the past, regardless of whether the connection was permissible
132 under law or practices applicable or prevailing at the time of connection.
133

134 SECTION 4. INDUSTRIAL DISCHARGES

- 135 4.1 Any responsible party subject an industrial NPDES discharge permit issued
136 by the IDNR shall comply with all provisions of such permit.
137 4.2 Proof of compliance with said permit may be required in a form acceptable
138 to the enforcement officer prior to discharges to the storm sewer system
139 authorized by said permit.
140

141 SECTION 5. ILLICIT DISCHARGE DETECTION AND REPORTING; COST RECOVERY

- 142 5.1 All detection activities permitted under this ordinance shall be conducted by
143 [the city engineer][the city public works director][the community
144 development director][the building inspector][a subcontractor credentialed
145 in a manner satisfactory to the city], or his or her designee, hereinbefore and
146 after referred to as the "enforcement officer."
147 5.2 The City shall not be responsible for the direct or indirect consequences to
148 persons or property of an illicit discharge, or circumstances which may
149 cause an illicit discharge, undetected by the City.
150 5.3 Every responsible party has an absolute duty to monitor conditions on
151 property owned or controlled by them, to prevent all illicit discharges, and
152 to report to the enforcement officer illicit discharges which the responsible
153 party knows or should have known to have occurred. Failure to comply with
154 any provision of this ordinance is a violation of this ordinance

⁵ It is acknowledged that this provision essentially subjects all construction sites to regulation which is more than state or federal law may mandate; however, the DNR has indicated that any discharge that constitutes a water quality violation is subject to regulation.

- 155 5.3.1 Notwithstanding other requirements of law, as soon as any
156 responsible party has information of any known or suspected illicit
157 discharge, the responsible party shall immediately take all necessary
158 steps to ensure the discovery, containment, and cleanup of such
159 discharge at the responsible party's sole cost.
- 160 5.3.2 If the illicit discharge consists of hazardous materials, the
161 responsible party shall also immediately notify emergency response
162 agencies of the occurrence via emergency dispatch services.
- 163 5.3.3 If the illicit discharge emanates from a commercial or industrial
164 establishment, the owner or operator of such establishment shall also
165 retain an on-site written record of the discharge and the actions
166 taken to prevent its recurrence. Such records shall be retained for at
167 least three years.
- 168 5.3.4 A report of an illicit discharge shall be made in person or by phone
169 or facsimile or email to the enforcement officer immediately but in
170 any event within twenty-four (24) hours of the illicit discharge;
171 notifications in person or by phone shall be confirmed by written
172 notice addressed and mailed or emailed to the enforcement officer
173 within twenty-four (24) hours of the personal or phone notice.
- 174 5.4 Any person or entity shall also report to the City any illicit discharge or
175 circumstances which such person or entity reasonably believes pose a risk
176 of an illicit discharge.
- 177 5.5 Upon receiving a report pursuant to the previous subsections, or otherwise
178 coming into possession of information indicating an actual or imminent
179 illicit discharge, the enforcement officer shall conduct an inspection of the
180 site as soon as reasonably possible and thereafter shall provide to the
181 responsible party, and any third party reporter, a written report of the
182 conditions which may cause or which have already caused an illicit
183 discharge. The responsible party shall immediately commence corrective
184 action or remediation and shall complete such corrective action or
185 remediation within twenty-four (24) hours.
- 186 5.6 The enforcement officer shall be permitted to enter and inspect property
187 subject to regulation under this section as often as is necessary to determine
188 compliance with this section. If a responsible party has security measures
189 that require identification and clearance before entry to its property or
190 premises, the responsible party shall make the necessary arrangements to
191 allow access by the enforcement officer. By way of specification but not
192 limitation:
- 193 5.6.1 A responsible party shall allow the enforcement officer ready access
194 to all parts of the property for purposes of inspection, sampling,
195 examination and copying of records related to a suspected, actual, or
196 imminent illicit discharge, and for the performance of any additional
197 duties as defined by state and federal law.
- 198 5.6.2 The enforcement officer shall have the right to set up on any
199 property such devices as are necessary in the opinion of the

- 200 enforcement officer to conduct monitoring and/or sampling related
201 to a suspected, actual or imminent illicit discharge.
- 202 5.6.3 The enforcement officer shall have the right to require any
203 responsible party at responsible party's sole expense to install
204 monitoring equipment and deliver monitoring data or reports to the
205 enforcement officer as the enforcement officer directs. The sampling
206 and monitoring equipment shall be maintained at all times in a safe
207 and proper operating condition by the responsible party at
208 responsible party's sole expense. All devices shall be calibrated to
209 ensure their accuracy.
- 210 5.6.4 Any temporary or permanent obstruction to safe and easy access to
211 property to be inspected and/or sampled shall be promptly removed
212 by the responsible party at the written or oral order of the
213 enforcement officer and shall not be replaced. The costs of clearing
214 such access shall be borne by the responsible party.
- 215 5.6.5 An unreasonable delay in allowing the enforcement officer access to
216 a property is a violation of this ordinance.
- 217 5.6.6 If the enforcement officer has been refused access to any part of the
218 property from an illicit connection and/or illicit discharge to a
219 municipal storm sewer is occurring, suspected or imminent, and is
220 able to demonstrate probable cause to believe that there may be a
221 violation of this ordinance, or that there is a need to inspect and/or
222 sample as part of a routine inspection and sampling program
223 designed to verify compliance with this ordinance or any order
224 issued hereunder, or to protect the overall public health, safety, and
225 welfare of the community, then the enforcement officer may seek
226 issuance of a search warrant from any court of competent
227 jurisdiction.
- 228 5.7 If it is determined that an illicit discharge is imminent or has occurred, the
229 actual administrative costs incurred by the City in the enforcement of this
230 ordinance shall be recovered from the responsible party. The enforcement
231 officer shall submit an invoice to the responsible party reflecting the actual
232 costs and wages and expenses incurred by the city for the enforcement
233 activities undertaken. Failure to pay charges invoiced under this ordinance
234 within thirty (30) days of billing shall constitute a violation of this
235 ordinance.

236
237 **SECTION 6. SUSPENSION OF ACCESS TO THE CITY'S STORM SEWER SYSTEM**

- 238 6.1 Emergency suspension. The enforcement officer may, without prior notice,
239 suspend storm sewer system access to a property when such emergency
240 suspension is necessary to stop an ongoing or imminent illicit discharge. If
241 the responsible party fails to immediately comply with an emergency
242 suspension order, the enforcement officer shall take such steps as deemed
243 necessary to prevent or minimize the illicit discharge. All costs of such
244 action shall be recovered from the responsible party for the property
245 identified as the source of the illicit discharge.

246 6.2 Non-emergency suspension. If the enforcement officer detects or is
247 informed of circumstances which could cause an illicit discharge but such
248 illicit discharge is not ongoing or imminent, and if the suspension of storm
249 sewer system access would reasonably be expected to prevent or reduce the
250 potential illicit discharge, the enforcement officer shall notify the
251 responsible party of the proposed suspension of storm sewer system access
252 and the time and date of such suspension. Notice to one responsible party
253 for the property shall be sufficient notice to all. Remediation of the
254 circumstances shall avoid a violation of this ordinance provided that no
255 illicit discharge occurs. In the alternative, the responsible party may request
256 a meeting with the enforcement officer for the purpose of presenting
257 information which the responsible party believes will show that remediation
258 is unnecessary, and if the enforcement officer finds such information is
259 satisfactory the enforcement officer may rescind or modify the notice of
260 suspension. If the enforcement officer finds such information unsatisfactory
261 the enforcement officer shall issue a final written order of suspension
262 including the date and time of suspension and such order may be appealed
263 as provided hereinafter. Any physical action to reinstate storm sewer system
264 access to property subject to such order prior to obtaining a court order of
265 relief shall be deemed a violation of this ordinance. An order of suspension
266 shall not preclude charging the responsible party with a municipal infraction
267 as provided hereinafter or taking any other enforcement action permitted by
268 statute or ordinance.
269

270 SECTION 7 WATERCOURSE PROTECTION. Every person owning property through which
271 a watercourse passes, or such person's lessee, shall keep and maintain that part of
272 the watercourse within the property below the elevation of the 100 year flood free
273 of trash, debris, grass clippings or other organic wastes and other obstacles that
274 would pollute, contaminate, or significantly alter the quality of water flowing
275 through the watercourse. In addition, the owner or lessee shall maintain existing
276 privately owned structures within or adjacent to a watercourse, so that such
277 structures will not become a hazard to the use, function, or physical integrity of the
278 watercourse.
279

280 SECTION 8. ENFORCEMENT

281 8.1 Violation of any provision of this ordinance may be enforced by civil action
282 including an action for injunctive relief. In any civil enforcement action,
283 administrative or judicial, the City shall be entitled to recover its attorneys'
284 fees and costs from a person who is determined by a court of competent
285 jurisdiction to have violated this ordinance.

286 8.2 Violation of any provision of this ordinance may also be enforced as a
287 municipal infraction within the meaning of §364.22, pursuant to the City's
288 municipal infraction ordinance.⁶

⁶ 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

289 8.3 Enforcement pursuant to this section shall be undertaken by the
290 enforcement officer upon the advice and consent of the City Attorney.
291

292 SECTION 9. APPEAL

293 9.1 Administrative decisions by city staff and enforcement actions of the
294 enforcement officer may be appealed by the applicant to the city council
295 pursuant to the following rules:⁷

296 9.1.1 The appeal must be filed in writing with the city clerk within five (5)
297 business days of the decision or enforcement action.

298 9.1.2 The written appeal shall specify in detail the action appealed from,
299 the errors allegedly made by the enforcement officer giving rise to
300 the appeal, a written summary of all oral and written testimony the
301 applicant intends to introduce at the hearing, including the names
302 and addresses of all witnesses the applicant intends to call, copies of
303 all documents the applicant intends to introduce at the hearing, and
304 the relief requested.

305 9.1.3 The enforcement officer shall specify in writing the reasons for the
306 enforcement action, a written summary of all oral and written
307 testimony the enforcement officer intends to introduce at the
308 hearing, including the names and addresses of all witnesses the
309 enforcement officer intends to call, and copies of all documents the
310 enforcement officer intends to introduce at the hearing.

311 9.1.4 The city clerk shall notify the applicant and the enforcement officer
312 by ordinary mail, and shall give public notice in accordance with
313 Chapter 21, Iowa Code, of the date, time and place for the regular or
314 special meeting of the city council at which the hearing on the
315 appeal shall occur. The hearing shall be scheduled for a date not less
316 than four (4) nor more than twenty (20) days after the filing of the
317 appeal. The rules of evidence and procedure, and the standard of
318 proof to be applied, shall be the same as provided by Chapter 17A,
319 Code of Iowa. The applicant may be represented by counsel at the
320 applicant's expense. The enforcement officer may be represented by
321 the city attorney or by an attorney designated by the city council at
322 City expense.

323 9.2 The decision of the city council shall be rendered in writing and may be
324 appealed to the Iowa District Court.
325
326

already have a municipal infraction ordinance, one should be seriously considered for reasons which are beyond the scope of this model ordinance.

⁷ 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.

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION _____ OF THE CITY OF _____ ZONING ORDINANCES, THE _____ ZONING CODE, TO INCORPORATE LOW-IMPACT DEVELOPMENT STORMWATER MANAGEMENT REQUIREMENTS.

WHEREAS, the preservation of natural resources and high-water quality for West Lake Okoboji are important goals of the City of _____, Iowa; and

WHEREAS, the management, filtration and control of Stormwater is important and necessary to the protection of natural resources and the water quality of West Lake Okoboji; and

WHEREAS, Iowa State University has developed an Iowa Stormwater Management Manual which provides guidelines, criteria, standards and methodologies for the control, filtration and management of Stormwater, which are generally accepted; and

WHEREAS, the _____ City Council has determined that Stormwater management requirements should be adopted and included in the _____ zoning and land use ordinances;

NOW, THEREFORE, BE IT ORDAINED by the _____ City Council as follows:

Section 1. No construction shall be undertaken which would result in covering more than Sixty-five percent (65%) of any parcel of Residential land with an impervious surface.

When there is any increase in the impervious surface of a lot, or when a previously undeveloped lot is improved to any extent, Stormwater management features shall be incorporated in all construction or remodeling activities, sufficient to manage and filter a water quantity volume of 1.25 inches of rainfall in a Twenty-four (24) hour period. Stormwater management features shall utilize infiltration elements to provide for the maximum filtration of suspended solids, to maximize detention time and to reduce the amount and period of runoff, all pursuant to the Iowa Stormwater Management Manual and certified by an Iowa registered engineer, an Iowa registered landscape architect, or by the _____ County Soil and Water Conservation District.

Section 2. It is recognized that the extensive use and excessive congestion of land induces the natural elements to become hazardous to the general health and welfare of the community. Therefore, the intent of this section is to require not less open space than which is necessary to preserve the basic qualities and beauty of nature. All buildings and land use in any Residential District shall comply with the following: On each lot there shall be provided an open space equal to at least thirty-five percent (35%) of the total lot area; said space shall be unencumbered with any structure or off-street parking and shall be landscaped and well maintained with grass, trees and shrubbery, except for areas used as pedestrian walks and ingress-egress drives; and ingress-egress drives shall not exceed two (2) twenty (20) foot lanes which are separated by open space.

Section 3. New residential subdivisions shall incorporate in each subdivision stormwater management features sufficient to manage and filter a water quantity volume of 1.25 inches of rainfall in a Twenty-four (24) hour period. Stormwater management features shall utilize infiltration elements to provide for the maximum filtration of suspended solids, to maximize detention time and to reduce the amount and period of runoff, all pursuant to the Iowa Stormwater Management Manual and certified by an Iowa registered engineer, an Iowa registered landscape architect, or by the _____ County Soil and Water Conservation District.

Section 6. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 7. 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 8. This ordinance shall be in effect following its final passage, approval and publication as provided by law.

Passed by the Council the _____ day of _____, 20____,

and approved this _____th day of _____, 20_____.

Mayor

Attest:

City Clerk

I hereby certify that the foregoing was published/posted as Ordinance No. _____ in the _____, on the _____ day of _____, 20_____.

City Clerk