

CHAPTER 40
STORM WATER MANAGEMENT
ORDINANCE NO. _____

§40-1. PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Lexington, Nebraska through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system by discharges by any person.
- (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- (3) To prevent non-storm water discharges generated as a result of spills, inappropriate dumping, or disposal to the City of Lexington separate storm drainage system.
- (4) To reduce pollutants in stormwater discharges from construction activity by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land.
- (5) To require the construction of locally-approved, permanent stormwater runoff controls to protect water quality and maintain non-erosive hydrologic conditions downstream of construction activity and development.
- (6) To require responsibility for and long-term maintenance of structural stormwater control facilities and nonstructural stormwater management.
- (7) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

§40-2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: The City of Lexington and its employees or third parties designated to enforce this ordinance.

Best Management Practices: Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. Best Management Practices also include treatment practices, operating procedures, and practices to control site runoff, spillage, leaks, sludge disposal, water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any

subsequent amendments thereto.

Construction Activity: Activities subject to National Pollutant Discharge Elimination System Construction Permits. Such activities include, but are not limited to, clearing, grubbing, grading, excavating, demolition and other land disturbing actions.

Construction Site: Any location where construction activity occurs.

Contractor: Any person performing or managing construction work at a construction site, including, but not limited to, any construction manager, general contractor or subcontractor, and any person engaged in any one or more of the following: earthwork, pipework, paving, building, plumbing, mechanical, electrical, landscaping or material supply.

Clearing: Any activity that removes the vegetative surface cover.

Disturbed Area: Area of the land's surface disturbed by any work or activity upon the property by means including but not limited to grading, excavating, stockpiling soil, fill, or other materials, clearing, vegetation removal, removal or deposit of any rock, soil, or other materials, or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned for agricultural use.

Drainage Plan: A schematic of the proposed area and how it connects to city's storm sewer system. Include proposed location, grade, direction of flow, elevations, drainage structures and drainage areas.

Earthwork: The disturbance of soil on a site associated with construction activities.

Erosion: The detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Erosion Control: Measures that prevent soil erosion to the maximum extent practicable.

Erosion and Sediment Control Plan: A plan that indicates the specific measures and sequencing to be used for controlling sediment and erosion on a development site during construction activity according to locally approved standards, specification, and guidance.

Final Stabilization: When all soil disturbing activities at the site have been completed, and vegetative cover has been established with a uniform density of at least 70 percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. For purposes of this Ordinance, establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site is considered final stabilization.

Financial Security: A surety bond, performance bond, maintenance bond, irrevocable letter of credit, or similar guarantees provided to the City of Lexington to assure that a construction Stormwater Pollution Prevention Plan is carried out in compliance with requirements of this Ordinance.

Municipal Separate Storm Sewer System: Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal

streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage ditches/channels, reservoirs, and other drainage structures.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge: Any direct or indirect non-storm water discharge to the storm drainage system unless exempted by this ordinance.

Illicit Connections:

(a) Any drain or conveyance, whether on the surface or subsurface, which allows any illicit discharge to enter the storm drainage system including, but not limited to, any conveyance which allows any non-storm water discharge including sewage, process wastewater, or wash water to enter the storm drainage system.

(b) Any connections to the storm drainage system from indoor drains and sinks regardless of whether said drain or connection has been previously allowed, permitted, or approved by an authorized enforcement agency.

(c) Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(d) An Illicit Connection does not include connections that have been formerly approved or connections that are allowed under section 40-7 of this code.

Industrial Activity: Activities subject to National Pollutant Discharge Elimination System Industrial Permits.

National Pollutant Discharge Elimination System Storm Water Discharge Permit: Means a permit issued by Environmental Protection Agency (or by the State of Nebraska under authority delegated to it) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drainage system that is not composed entirely of storm water.

Operator: The individual who has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, the developer, the general contractor or the agent of one of these parties. It is anticipated that at different phases of a construction project, different types of parties will satisfy the definition of 'operator' and the pertinent portions of any applicable permit authorization from the State of Nebraska will be transferred as the roles change.

Owner: The person who owns a facility, development, part of a facility, or land.

Person: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

Phasing: Clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Pollutant: Anything which causes or contributes to pollution. Pollutants include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes; yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Post-Construction: The general time period referenced in perpetuity from the approval for final acceptance of the construction phase of any construction activity.

Receiving Water: Any water of the State of Nebraska, including any and all surface waters that are contained in or flow in or through the State of Nebraska, all watercourses, even if they are usually dry, irrigation ditches that receive municipal stormwater, and storm sewer systems owned by other entities.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Sediment: Soil (or mud) that has been disturbed or eroded and transported naturally by water, wind or gravity, or mechanically by any person.

Sediment control: Measures that prevent eroded sediment from leaving the site.

Site: The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Spill: A release of solid or liquid material, which may cause pollution of the Municipal Separate Storm Sewer System or waters of the State.

Stabilization: The use of practices that prevent exposed soil from eroding.

Storm Drainage System: Publicly-owned facilities by which storm water is collected and/or conveyed, including, but not limited to; any roads with drainage systems; municipal streets; gutters; curbs; inlets; piped storm drains; pumping facilities; retention and detention basins; natural and human-made or altered drainage channels; reservoirs; and other drainage structures. The storm drainage system in Lexington is a municipal separate storm sewer system as defined by applicable federal regulations.

Storm Water: Any surface flow, runoff, or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

Subdivision Development: Includes activities associated with the platting of any parcel of land into two or more lots and all construction activity taking place thereon.

Utility Agency/Contractor: Private utility companies, public utility departments, or other utility providers, contractors working for such private utility companies, or public entity utility departments, or other utility providers engaged in the construction or maintenance of utility lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

Wastewater: Means any water or other liquid, other than uncontaminated storm water, discharged from any premises or facility. Wastewater includes sewage that is treated at the City's Waste Water Treatment Plant.

Waters of the State: Any and all surface and subsurface waters that are contained in or flow in or through the State of Nebraska. The definition includes all watercourses, even if they are usually dry.

§40-3. APPLICABILITY.

This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted.

§40-4. RESPONSIBILITY FOR ADMINISTRATION.

The City of Lexington shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Lexington may be delegated by the City Manager to persons or entities acting in the beneficial interest of or in the employ of the City.

§40-5. SEVERABILITY.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

§40-6. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards. Compliance with this ordinance does not act as a waiver or defense to any person for contamination, pollution, or unauthorized discharge of pollutants. Ultimate responsibility for prohibited acts rests with persons who own or are in possession or control of premises from which the discharge of contaminants or pollutants emanates.

§40-7. ILLICIT DISCHARGE.

No person shall discharge or cause to be discharged into the municipal storm drainage system or watercourses any materials including, but not limited to, pollutants or waters containing any

pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct or continuance of any illicit discharge to the storm drainage system is prohibited except as described.

§40-8. ALLOWED DISCHARGE.

(a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources; landscape irrigation or lawn watering; diverted stream flows; rising ground water; ground water infiltration to storm drains; uncontaminated pumped ground water; foundation or footing drains (not including active groundwater dewatering systems); crawl space pumps; air conditioning condensation; springs; non-commercial washing of vehicles; natural riparian habitat or wet-land flows; swimming pools (if dechlorinated - typically less than one PPM chlorine); fire fighting activities; and any other water source not containing Pollutants.

(b) Discharges determined by the City to be necessary to protect public health and safety.

(c) Dye testing if the City is notified in writing prior to the time of the test.

(d) Any non-storm water discharge permitted under an National Pollutant Discharge Elimination System permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drainage system.

§40-9. ILLICIT CONNECTION. ~~CONNECTION PROHIBITIONS.~~

The construction, use, maintenance or continued existence of illicit connections to the storm drainage system are prohibited.

(a) This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(b) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage or pollutants to the Municipal Separate Storm Sewer System or allows such a connection to continue.

§40-10. SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS.

Suspension due to Illicit Discharges in Emergency Situations

The City of Lexington may, without prior notice, suspend storm drainage system discharge access to a person when the City deems it necessary to prevent an actual or threatened discharge which presents or may present imminent and substantial danger to: the environment; to the health or welfare of persons or to the storm drainage system; or to waters of the United States of America. If the person fails to comply with a suspension order issued in an emergency, the City of Lexington may take such steps as deemed necessary to prevent or minimize damage to persons, the storm drainage system, waters of the United States of America.

Suspension due to the Detection of Illicit Discharge

Any person discharging to the storm drainage system in violation of this ordinance may have their storm drainage system access terminated if such termination would abate or reduce an illicit discharge. The City will notify a person of the proposed termination of storm drainage system access by personal delivery or by United States Mail. The person may request a hearing before the City Director of Public Works by delivering such request in writing to the City Clerk. The person is not entitled to a stay of the termination pending any such hearing.

A person commits an offense if the person accesses or attempts to access the storm drainage system from premises terminated pursuant to this Section, without the prior approval of the City.

§40-11. CONSTRUCTION. RESERVED

§40-12. POST-CONSTRUCTION. RESERVED

§40-13. TECHNICAL STANDARDS, SPECIFICATIONS, AND GUIDANCE. RESERVED

§40-14. MONITORING OF DISCHARGES.

(a) Applicability.

This section applies to all premises that have storm water discharges associated with industrial activity, including construction activity.

(b) Access to premises.

(1) The City of Lexington's designees shall be permitted to enter and inspect premises and facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.

(2) The City's designees shall be given access to all parts of the premises for the purposes of: inspection; sampling; examination and copying of records that must be kept under the conditions of the National Pollutant Discharge Elimination System permit to discharge storm water; and the performance of any additional duties as defined by state and federal law.

(3) The City may place upon the premises such devices as deemed necessary to conduct monitoring and/or sampling of discharges from the premises.

(4) The City of Lexington may require a person to install monitoring equipment as necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition at no expense to the City. All devices used to measure storm water flow and quality shall be calibrated to ensure accuracy.

(5) Any obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed at the request of the City and shall not be replaced. The costs of clearing such access shall not be paid by the City.

(6) Unreasonable delays in allowing Lexington City designees access to premises is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility or premises with a National Pollutant Discharge Elimination System permit to discharge storm water associated with industrial activity commits an offense if the person denies the City reasonable access for the purpose of conducting any activity authorized or required by this ordinance.

(7) If a City of Lexington designee has been refused access to any part of the premises from which storm water is discharged, the City of Lexington may seek issuance of a search warrant from any court of competent jurisdiction.

§40-15. BEST MANAGEMENT PRACTICES.

The City of Lexington may adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drainage system, or waters of the United States of America. The owner or operator of a commercial or industrial establishment shall provide, at the owner or operator's expense, reasonable protection from discharge of prohibited materials or other wastes into the municipal storm drainage system or watercourses through the use of these structural and non-structural Best Management Practices. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural Best Management Practices to prevent the further discharge of pollutants to the municipal separate storm sewer system. These Best Management Practices shall be part of a storm water pollution prevention plan as necessary for compliance with requirements of any National Pollutant Discharge Elimination System permit.

§40-16. WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, and such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

§40-17. NOTIFICATION OF DISCHARGES AND SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility, premises, or operation, has information of any known or suspected release of materials which result or may result in illegal discharges or pollutants discharging into storm water, the storm drainage system, or waters of the United States of America, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such release of hazardous materials, said person shall immediately notify emergency response agencies and the City of Lexington of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Lexington in person or by phone or facsimile no later than the next business day. Notifications in person, by phone, or by facsimile shall be confirmed by written notice addressed and mailed to the City of Lexington within three business days of the prior notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§40-18. NOTICE OF VIOLATION.

Whenever the City of Lexington finds that a person has violated or failed to meet a requirement of this Ordinance, the City's designee may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of costs to cover administrative and remediation expenses;
- (f) The implementation of source control, treatment, and prevention practices. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator and may be assessed against the real estate or collected by civil action.

§40-19. APPEAL OF NOTICE OF VIOLATION.

Any person receiving a notice of violation may appeal the determination. The notice of appeal must be received within 10 days from the date of the notice of violation. Hearing on the appeal before the Director of Public Works or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Director shall be final.

§40-20. ENFORCEMENT MEASURES AFTER APPEAL.

If the violation has not been corrected as set forth in the notice of violation, or, in the event of an appeal, within 25 days of the original deadline if the Director upholds the notice of violation, then representatives of the City of Lexington may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City's designees or agents to enter upon the premises for the purposes set forth above.

§40-21. COST OF ABATEMENT OF THE VIOLATION.

After abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within 30 days, the City of Lexington may sue to recover the costs through a civil action or levy and assess the costs against the real estate in the manner of special assessments.

§40-22. INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the City of Lexington may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. Injunctive relief shall be in addition to any other remedy available under this ordinance or any other federal or state law.

§40-23. VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be abated or restored at the violator's expense, in the same manner as other nuisances under the Lexington Municipal Code.

§40-24. CRIMINAL PROSECUTION.

Any person violating any provision of this ordinance shall, upon conviction, be guilty of an infraction. Each day shall constitute a separate offense and be punishable by a fine of \$100.00. Criminal fines shall be in addition to any civil remedies available under Lexington Municipal Code.

§40-25. REMEDIES NOT EXCLUSIVE.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

~~§40-24.~~ PASSED AND APPROVED this _____ day of _____, 2009.

ATTEST:

City Clerk

Mayor

(SEAL)

Approved as a form: _____
City Attorney