

**BILL NO. 4503**

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF WEST PLAINS, MISSOURI TO REPEAL AND REPLACE CHAPTER FORTY-SIX OF THE CODE OF ORDINANCES OF THE CITY OF WEST PLAINS TITLED UTILITIES.

WHEREAS, the City of West Plains, Missouri has reviewed Chapter Forty-Six, Utilities, of the Code of Ordinances for the City of West Plains and saw a need for an updated version.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI AS FOLLOWS:

Section 1: Chapter Forty-Six, Utilities, will be replaced with an updated version. (EXHIBIT A).

Section 2: This Ordinance shall be in full force and in effect after the date of its passage and approval.

PASSED AND APPROVED THIS 22<sup>nd</sup> DAY OF MAY 2017.

CITY OF WEST PLAINS, MISSOURI

BY: \_\_\_\_\_  
MAYOR JACK PAHLMANN

ATTEST:

\_\_\_\_\_  
CITY CLERK MALLORY PREWETT

## Chapter 46 - UTILITIES

### ARTICLE I. - IN GENERAL

#### Sec. 46-1. - Right of entry of city employees.

The duly authorized city officers or employees shall have the right at all reasonable hours to freely enter the premises of any consumer for the purpose of examining, repairing or reading any meter used in connection with its utility system or for any other purpose that may be deemed essential for the protection of the interests of the city in relation to its utility system. The refusal of the consumer to permit such entry shall entitle the city to discontinue the service.

(Code 1976, § 29-5; Code 2002, § 94-1)

#### Sec. 46-2. - Service to comply with technical regulations.

Any utility service furnished under this chapter shall be in accordance with and in compliance with all applicable technical sections and provisions of this Code, state law and city ordinances, rules and regulations, and no water shall be turned on for service in premises in which the plumbing does not comply with this Code or the city ordinances, provided that water may be turned on for construction work in unfinished buildings subject to this chapter.

(Code 1976, § 29-17; Code 2002, § 94-2)

#### Sec. 46-3. - Service application; service agreement required; connection charges.

- (a) Any person desiring any utility service furnished by the city shall make application therefor to the city utility office. Such application shall contain the applicant's name, address and the uses for which such utility service is desired.
- (b) No new account shall be opened for utility service unless accompanied by a signed service agreement between the city and the individual person accepting the responsibility for the payment of utility bills.
- (c) Service charges for connecting services shall be as provided in the city fee schedule if the service connection is made during normal operating hours.

(Code 1976, § 29-18; Code 2002, § 94-3)

#### Sec. 46-4. - Issuance of permit for service.

Upon the approval of the application for any utility service, the city utility office shall issue a permit therefor.

(Code 1976, § 29-19; Code 2002, § 94-4)

#### Sec. 46-5. - Use of service without permit.

It shall be unlawful for any person not having a permit to use any utility service offered by the city or to make any connection thereto.

(Code 1976, § 29-20; Code 2002, § 94-5)

Sec. 46-6. - Use of service contrary to permit.

Any person having a permit from the city for the use of any utility service offered by the city who shall use such utility service for any purpose other than that mentioned in such permit shall be deemed guilty of a misdemeanor.

(Code 1976, § 29-21; Code 2002, § 94-6)

Sec. 46-7. - Use of service assumed.

All premises connected to any city utility service shall be assumed to be using such utility service, and the owner or occupant shall be charged therefor so long as such premises shall remain connected with the utility service.

(Code 1976, § 29-22; Code 2002, § 94-7)

Sec. 46-8. - Service restricted to one person.

It shall be unlawful for any person obtaining any utility service from the city to habitually permit any other person to use such utility service.

(Code 1976, § 29-23; Code 2002, § 94-8)

Sec. 46-9. - Sale of service by customer.

It shall be unlawful for any person to resell any utility service obtained from the city to others, except by units of local government or recognized and licensed utility companies, and then only by special arrangement with the city.

(Code 1976, § 29-25; Code 2002, § 94-9)

Sec. 46-10. - Temporary interruption of service.

The city reserves the right to cut off any utility service without notice in an emergency. When an interruption in service is necessary for maintenance and improvement to the utility system, affected consumers thereof will be notified as circumstances permit.

(Code 1976, § 29-26; Code 2002, § 94-10)

Sec. 46-11. - Liability for damage.

The city shall not be liable for any damage to the property of any consumer of any utility service furnished by the city due to backflow of the sewer system, failure of the service supply, interruption of service or any other cause outside the direct control of the city.

(Code 1976, § 29-27; Code 2002, § 94-11)

Sec. 46-12. - Plumbing inspection outside city.

In order to protect the city water supply, the city shall not make any water or sewer taps outside the city limits until the plumbing of the premises involved has been inspected and approved by the city code official, which inspection shall be made only after deposit of the stipulated fee for such inspection by the property owner. The plumbing shall be in accordance with the city plumbing regulations.

(Code 1976, § 29-34; Code 2002, § 94-18)

Sec. 46-13. - Termination of service for noncompliance.

The city shall have the right to disconnect or refuse to connect or reconnect any utility service which does not meet the applicable sections or provisions of this Code, state law or city ordinances, rules or regulations.

(Code 1976, § 29-42; Code 2002, § 94-24)

Sec. 46-14. - Connection to city utilities from outside city limits.

- (a) Customers outside the corporate limits requesting connection to the city water and/or sewer system must submit a valid annexation petition for all contiguous property before any connection will be approved, unless modified by a valid intergovernmental agreement providing for alternative conditions of service. If the customer's property is not contiguous to the current municipal boundaries, the petition shall be placed in escrow to allow immediate action on the annexation at the time the property becomes contiguous. In addition, the customer must enter into a water and/or sewer facilities agreement, approved by the city council, before the connection will be allowed. New and existing uses outside the city limits connected to the city water system must supply backflow protection approved by the city sufficient to protect the city water system.
- (b) Any customer, being located outside the corporate limits, whether wholesale or otherwise, directly or indirectly, connected to the city water and sewer system may be disconnected from city water and sewer utilities if found to be in violation of this chapter.

(Code 2002, § 94-25; Ord. No. 3684, § 29-43, 7-17-2000)

Sec. 46-15. - Sewer and water reimbursement agreements.

- (a) The city officers are authorized to enter into sewer and water reimbursement agreements with persons who construct or finance the construction of sewer and water projects which are oversized to serve areas larger than the needs of the immediate development and to collect sewer and water reimbursement connection fees from persons who connect to such sewer lines, for reimbursement as set forth in this section.
- (b) All such sewer and water reimbursement agreements shall be subject to approval by ordinance. Such approval shall be considered by the city council on a case-by-case basis.
- (c) Reimbursement payments shall be paid to the city at the time other standard city fees are paid and prior to any connections being made to the line. The city will then reimburse such payments to the person who entered into the sewer and water reimbursement agreement. Nothing contained in this subsection shall be construed to create any liability for the city for failure to collect such reimbursement fees, but the contracting party shall be expressly authorized to act in contracting the party's own name to institute legal action against any person liable for such nonpayment.
- (d) Notwithstanding subsections (a) through (c) of this section, no such sewer and water reimbursement fee shall be required or collected from any customer located within any political subdivision or within any land owned by any governmental entity, either of which has previously entered into a contract

with the city providing for the construction of sewer lines or water lines and the treatment of wastewater.

(Code 2002, § 94-26; Ord. No. 3684, § 29-45, 7-17-2000)

Secs. 46-16—46-57. - Reserved.

## ARTICLE II. - SERVICE AND CHARGES

### DIVISION 1. - GENERALLY

Secs. 46-58—46-87. - Reserved.

### DIVISION 2. - RATES, CHARGES AND BILLING

Sec. 46-88. - Preparation of necessary forms.

The director of public works is hereby authorized to prepare such forms as are necessary to properly carry out this division.

(Code 1976, § 29-67; Code 2002, § 94-81)

Sec. 46-89. - Free service prohibited.

Except as may be provided by the city council, no utility service shall be furnished without charge therefor to any person by the city.

(Code 1976, § 29-54; Code 2002, § 94-82)

Sec. 46-90. - Deposits generally.

Deposits by customers for utility services shall be regulated as follows:

- (1) Each account shall be ensured by a separate deposit. The deposit shall be assigned to that account instead of an individual. Deposit rates are as set forth in section 46-91.
- (2) Accounts which are not covered by a deposit shall be permitted to continue until such time as the account is changed or interrupted, at which time a deposit will be required before the account is reactivated.

(Code 1976, § 29-55; Code 2002, § 94-83)

Sec. 46-91. - Water and power deposits.

- (a) The fees to be charged as deposits for water and power shall be as provided in the city fee schedule.

- (b) The sums required in this section as deposits for water and electric power shall be retained by the city to ensure payment of all bills. When service to the applicant is discontinued permanently, this deposit, less any amount still due the city, shall be refunded without interest.

(Code 1976, § 29-56; Code 2002, § 94-84; Ord. No. 3670, § 29-56, 2-22-2000)

Sec. 46-92. - Electricity rates.

The city shall charge such electricity rates as it deems necessary and may make such distinctions as to classes of users as is necessary. Such rates charged by the city shall be on file in the city utility office.

(Code 1976, § 29-57; Code 2002, § 94-85)

Sec. 46-93. - Water rates.

The rates for water shall be on file in the city utility office.

(Code 1976, § 29-58; Code 2002, § 94-86)

Sec. 46-94. - Sewer rates.

The charges for use of the sewer system shall be on file in the city utility office.

(Code 1976, § 29-59; Code 2002, § 94-87)

Sec. 46-95. - Taps; utility user fees and franchise fees.

- (a) *Water*. There shall be a charge in an amount as provided in the city fee schedule to make a three-quarter-inch connection to the water system from the main to the property, including setting the meter, which work shall be done by the city. The consumer shall be responsible for charges for the service from the property line. For service over three-quarter-inch, the consumer shall pay for the time and materials, with a minimum charge as provided in the city fee schedule.
- (b) *Sewers*. There shall be a permit fee in an amount as provided in the city fee schedule to make a sewer tap, which shall be made only by a plumber.
- (c) *Miscellaneous fees*. Charges for miscellaneous goods and services shall be as provided in the city fee schedule.
- (d) *Franchise fees*. Franchise fees shall be set annually depending on budgetary needs for the city and by agreements for other entities.

(Code 1976, §§ 29-60, 29-68; Code 2002, § 94-88; Ord. No. 3670, §§ 29-60, 29-68, 2-22-2000; Ord. No. 3697, § 1, 9-18-2000; Ord. No. 4026, § 1, 6-18-2007)

Sec. 46-96. - Single billing for city utilities and garbage collection authorized; application of payments.

- (a) The city utility office is authorized in its discretion to include all charges for electric service, water service and garbage and rubbish collection chargeable to a single customer on a single bill, stating thereon the current amount for each of the separate services and the total of such current amounts, and stating as a single sum the total of all delinquencies from the three sources combined without itemization.

- (b) If the city utility office shall use a single bill, as provided in subsection (a) of this section, and any customer shall pay less than the total amount shown due thereon, the city utility office, for bookkeeping purposes, shall prorate the payment among the services for which the charges were made in the same ratio as the charges for any one of the services bears to the total charges for all services included on the bill, unless the customer specifies a different distribution and allocation of the payment, in which event the method specified by the customer shall control. Any delinquency in the payment by a customer for electric service, water service or garbage and rubbish collection service resulting from the prorating of a less than full payment amount being received from the customer shall be construed as failure to pay for the service. The city utility office, in such a case, is authorized to follow the procedures provided by article I of this chapter and this article for cutting off or terminating service for failure to pay the charges therefor.

(Code 1976, § 29-61; Code 2002, § 94-89)

Sec. 46-97. - Billing; delinquent accounts.

Billing of utility customers in the city shall be as follows:

- (1) The city shall mail out all utility bills at least three days before the first day of the next succeeding month.
- (2) Accounts not paid by closing time on the tenth day of the month or on the first day thereafter that the city offices are open, if the tenth day falls on a weekend or a holiday, shall be delinquent.

(Code 1976, § 29-62; Code 2002, § 94-90)

Sec. 46-98. - Procedure for handling delinquent accounts.

Delinquent accounts shall be regulated and handled in the following manner:

- (1) Cutoff notices shall be mailed out on the third day after the account becomes delinquent, and a penalty charge of \$10.00 shall be added to the account.
- (2) Cutoff notices shall specify that if the account is not paid in full, including all penalties and charges, or suitable credit arrangements made, within three days of the date of mailing the notice, the service will be discontinued and an additional charge of \$20.00 will be made for re-energizing the service after it has been cut off. The notice shall further specify that if the customer believes the billing is incorrect that the customer shall file a written statement with the city clerk, within three days from the date of mailing the notice, setting forth his reasons for believing that the billing is incorrect.
- (3) Payments received after the account becomes delinquent which are partial payments or which do not include the penalty charge will be credited to the account, but until the balance is paid, the account shall be considered delinquent and therefore subject to being discontinued.
- (4) Accounts having an outstanding balance of less than \$15.00 shall not be disconnected for nonpayment, but the balance shall be added to the next bill.
- (5) A service that has been cut off for nonpayment shall not be re-energized until the account is settled at the utility office.
- (6) The serviceman assigned to cut off delinquent accounts is not to collect money on the account.
- (7) The city utility office shall have authority to approve credit arrangements on delinquent accounts less than \$100.00. Credit arrangements on delinquent accounts in excess of \$100.00 must be approved by the city council.
- (8) All accounts must be closed by the 20th of the month.

- (9) The actual cost of collecting delinquent bills shall be assessed to the customer, including, but not limited to, attorney's fees, court costs and amounts paid to collection agencies.

(Code 1976, § 29-63; Code 2002, § 94-91; Ord. No. 3670, § 29-63, 2-22-2000)

Sec. 46-99. – Reserved.

(Code 1976, § 29-64; Code 2002, § 94-92)

Sec. 46-100. - Procedure for payment of bills.

All utility bills may be paid either in person at the designated office or by mail or online or ACH draft on the due date.

(Code 1976, § 29-65; Code 2002, § 94-93)

Sec. 46-101. - Charges for relocation of utilities.

Utility relocations for the convenience of the customer, such as moving poles, hydrants, meters or similar objects, shall be at the expense of the customer.

(Code 1976, § 29-66; Code 2002, § 94-94)

Sec. 46-102. - Street cuts.

The charge for a street cut will be per square foot as provided in the city fee schedule.

(Code 2002, § 94-95; Ord. No. 4026, § 2, 6-18-2007)

Secs. 46-103—46-132. - Reserved.

### ARTICLE III. - SEWERS AND SEWAGE DISPOSAL

#### DIVISION 1. - GENERALLY

Sec. 46-133. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Approving authority* means the director of public works or other designated city official or his duly authorized deputy, agent or representative.

*BOD*, denoting biochemical oxygen demand, means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

*Building drain* means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.



*Building sewer* means the extension from the building drain to the public sewer or other place of disposal.

*Chlorine requirement* means the amount of chlorine in milligrams per liter which must be added to sewage to produce a residual chlorine content or to meet the requirements of some other objective, in accordance with the definition for Standard Methods.

*Combined sewer* means a sewer receiving both surface runoff and sewage.

*Garbage* means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

*Hydrogen ion concentration*. See *pH*.

*Industrial wastes* means the liquid wastes from industrial manufacturing processes, trade or business, as distinct from sanitary sewage.

*Natural outlet* means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

*pH* means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

*Properly shredded garbage* means the wastes from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

*Public sewer* means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

*Sanitary sewer* means a sewer which carries sewage and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

*Service charge* means the basic assessment levied on all users of the public sewer system whose wastes do not exceed in strength the concentration values established as representative of normal sewage.

*Sewage* means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present.

*Sewage treatment plant* means any arrangement of devices and structures used for treating sewage.

*Sewer* means a pipe or conduit for carrying sewage.

*Sewerage works* means all facilities for collecting, pumping, treating and disposing of sewage.

*Slug* means any discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flow during normal operation.

*Standard Methods* means the examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water, Sewage and Industrial Wastes, published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation.

*Storm drain; storm sewer* means a sewer which carries stormwaters and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

*Surcharge* means the assessment in addition to the service charge which is levied on those persons whose wastes are greater in strength than the concentration values established as representative of normal sewage.

*Suspended solids* means solids that either float on the surface of, or are in suspension in, water, sewage or other liquids, and which are removable by laboratory filtering.

*Watercourse* means a channel in which a flow of water occurs, either continuously or intermittently.

(Code 1976, § 29-78; Code 2002, § 94-121)

Sec. 46-134. - Violations.

- (a) Any person found to be violating any section of this article, except section 46-139, shall be served by the city with a written notice sent by mail stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. Any person who shall continue any violation beyond such time limit shall be deemed guilty of a misdemeanor.
- (b) Any person violating any of the sections of this article shall become liable to the city for any expense, loss or damage occasioned the city because of such violation.

(Code 1976, § 29-84; Code 2002, § 94-122)

Sec. 46-135. - Inspection and right of entry.

- (a) Representatives of the approving authority and other duly authorized city employees, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with this article. The approving authority shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper or other industries, beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.
- (b) The approving authority or duly authorized city employees shall observe all safety rules applicable to the premises established by the company. The company shall be held harmless for injury or death to any city employee, and the city shall indemnify the company against loss or damage to its property by any city employee and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in section 46-230.
- (c) The approving authority and other duly authorized city employees, bearing proper credentials and identification, shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage works lying within such easement. All entry and subsequent work, if any, on such easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Code 1976, § 29-82; Code 2002, § 94-123)

Sec. 46-136. - Discharge to natural outlets generally.

No person shall discharge or cause to be discharged to any natural outlet within the city or in any area under the city's jurisdiction any sewage or other polluted waters, except where suitable treatment has been provided in accordance with this article.

(Code 1976, § 29-79; Code 2002, § 94-124)

Sec. 46-137. - Mandatory sewer connections; septic tanks.

- (a) At such time as a public sewer becomes available to a property served by a private sewage disposal system, a direct connection shall be made to the public sewer in compliance with this article, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled

with suitable material to the satisfaction of the approving authority. When a public sewer becomes available, the building sewer shall be connected to such sewer within 60 days.

- (b) Where a public sanitary or combined sewer is not available under this section, the building sewer shall be connected to a private sewage disposal system complying with this article. No septic tank shall be constructed within the city unless there is no sanitary sewer service readily available as provided in this section.
- (c) If a sewer connection is abandoned through demolition or the removal of a building or a new connection is installed and an old connection abandoned, a permit shall be obtained from the sewer supervisor which will authorize the abandoned sewer connection to be sealed. The city shall inspect and approve the disconnection seal.

(Code 1976, § 29-80; Code 2002, § 94-125)

Sec. 46-138. - Privies over public sewers, ditches or drains.

It shall be unlawful to erect or have erected a jakes or privy over any public sewer, ditch or drain used as a channel to carry off water.

(Code 1976, § 29-81; Code 2002, § 94-126)

Sec. 46-139. - Liability for obstruction of or damage to public sewer.

If a public sewer becomes obstructed or damaged because of any substances improperly discharged thereto, the person responsible for such discharge shall be billed and shall pay for the expenses incurred by the city in cleaning out, repairing or rebuilding the sewer. Such payment shall not preclude prosecution for violation of any section of this Code.

(Code 1976, § 29-83; Code 2002, § 94-127)

Secs. 46-140—46-161. - Reserved.

## DIVISION 2. - PRIVATE SEWAGE DISPOSAL SYSTEMS

Sec. 46-162. - Private sewage disposal code adopted.

There is hereby adopted for the purposes of regulating building construction within the city the code known as the International Private Sewage Disposal Code, 2012 edition, published by the International Code Council, Inc. Copies of such code are on file in the office of the building official.

(Code 1976, § 29-103; Code 2002, § 94-156; Ord. No. 3676, § 1, 3-27-2000)

Sec. 46-163. - Compliance with division required.

It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage except as provided in this division.

(Code 1976, § 29-96; Code 2002, § 94-157)

Sec. 46-164. - Construction of division.

No statement contained in this division shall be construed to interfere with any additional requirements that may be imposed by the regulatory agency or local health agencies.

(Code 1976, § 29-102; Code 2002, § 94-158)

Sec. 46-165. - Permit required.

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the approving authority or any concerned regulatory agency.

(Code 1976, § 29-97; Code 2002, § 94-159)

Sec. 46-166. - Permit application; fee.

The application for a permit required by this division shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the approving authority. A permit and inspection fee in accordance with the schedule of permit fees set forth in the building and plumbing regulations for structures shall be paid to the city at the time the application is filed.

(Code 1976, § 29-98; Code 2002, § 94-160)

Sec. 46-167. - Inspection prior to issuance of permit.

A permit for a private sewage disposal system as required by this division shall not become effective until the installation is completed to the satisfaction of the approving authority. The approving authority shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the approving authority when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 48 hours of receipt of the notice by the approving authority.

(Code 1976, § 29-99; Code 2002, § 94-161)

Sec. 46-168. - Standards prescribed.

- (a) The type, capacity, location and layout of a private sewage disposal system shall comply with all recommendations of the regulatory agency and the state clean water commission.
- (b) No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 15,000 square feet.
- (c) No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(Code 1976, § 29-100; Code 2002, § 94-162)

Sec. 46-169. - Maintenance of facilities.

The owner of the property shall operate and maintain any private sewage disposal facilities thereon in a sanitary manner at all times and at no expense to the city.

(Code 1976, § 29-101; Code 2002, § 94-163)

Secs. 46-170—46-191. - Reserved.

### DIVISION 3. - BUILDING SEWERS AND CONNECTIONS

Sec. 46-192. - Permit required; classes of permits; permit application and fees.

- (a) No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the approving authority. There shall be three classes of building sewer permits as follows:
  - (1) Residential.
  - (2) Commercial service.
  - (3) Service to establishments producing industrial wastes.
- (b) The owner or his agent shall make application therefor on a special form furnished by the city, which shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the approving authority. A permit and inspection fee in accordance with the schedule of permit fees for sewage installations as provided in the building and plumbing regulations shall be paid to the city at the time the application is filed.

(Code 1976, § 29-114; Code 2002, § 94-191)

Sec. 46-193. - Inspection prior to issuance of permit.

The applicant for a building sewer permit required by this division shall notify the approving authority when the building sewer is ready for inspection and connection to the public sewer.

(Code 1976, § 29-115; Code 2002, § 94-192)

Sec. 46-194. - Supervision required for connection.

No person shall connect a building sewer to a public sewer or any appurtenance thereof, unless such connection is made under the supervision of the approving authority.

(Code 1976, § 29-116; Code 2002, § 94-193)

Sec. 46-195. - Owner to bear cost of installation.

All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner of the building. The owner shall indemnify the city from any loss or damage that may, directly or indirectly, be occasioned by the installation of the building sewer.

(Code 1976, § 29-117; Code 2002, § 94-194)

Sec. 46-196. - Standards.

- (a) A separate and independent building sewer shall be provided for every building. However, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.
- (b) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the approving authority, to meet all requirements of this article.
- (c) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall all conform to the requirements of the city building and plumbing regulations. In the absence of such provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.
- (d) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(Code 1976, § 29-118; Code 2002, § 94-195)

Sec. 46-197. - Connection of sources of runoff or groundwater.

No person shall make connection of roof downspouts, interior and exterior foundation drains, area-way drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected, directly or indirectly, to a public sanitary sewer.

(Code 1976, § 29-119; Code 2002, § 94-196)

Sec. 46-198. - Standards for connection to public sewer.

The connection of the building sewer into the public sewer shall conform to the city building and plumbing regulations or the procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9. All connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the approving authority before installation.

(Code 1976, § 29-120; Code 2002, § 94-197)

Sec. 46-199. - Excavations.

All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(Code 1976, § 29-121; Code 2002, § 94-198)

Secs. 46-200—46-221. - Reserved.

DIVISION 4. - USE OF PUBLIC SEWERS

Sec. 46-222. - Construction of division.

No statement contained in this division shall be construed as preventing any special agreement or arrangement between the city and any user or group of users of a public sewer.

(Code 1976, § 29-142; Code 2002, § 94-226)

Sec. 46-223. - Discharge of stormwater, surface water and unpolluted drainage.

- (a) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water or unpolluted industrial process water, to any sanitary sewer.
- (b) Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the approving authority. Industrial cooling water or unpolluted process water may be discharged, on approval of the approving authority, to a storm sewer, combined sewer or natural outlet.

(Code 1976, § 29-133; Code 2002, § 94-227)

Sec. 46-224. - Industrial waste questionnaire required.

Any person who discharges industrial wastes into the sewer system, either directly or indirectly, upon the written request of the approving authority, shall fill out and file with the approving authority within 90 days an industrial waste questionnaire to be furnished by the approving authority. The discharger shall set out the quantity and characteristics of the wastes discharged into the sewer system. Similarly, any person desiring to establish a new connection to a public sewer for the purpose of discharging industrial wastes may be required to fill out and file such a questionnaire, which shall include actual or predicted data relating to quantity and characteristics of the wastes to be discharged. When special circumstances, such as the size or complexity of the owner's sewage disposal problem, would make complying with the time schedule cited in this section an unreasonable burden on the person, an extension of time, not to exceed 90 days, may be granted by the approving authority upon presentation of a proper application.

(Code 1976, § 29-134; Code 2002, § 94-228)

Sec. 46-225. - Prohibited discharges.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- (1) Gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
- (2) Waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including, but not limited to, cyanides in excess of two mg/l as CN in the wastes as discharged to the public sewer.
- (3) Waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to the structures, equipment and personnel of the sewerage works.
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewerage works, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar,

plastics, wood, unground garbage, whole blood, paunch manure, hair, fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(Code 1976, § 29-135; Code 2002, § 94-229)

Sec. 46-226. - Alternatives to discharge of prohibited substances.

- (a) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters or wastes contain the substances or possess the characteristics enumerated in section 46-225 and which, in the judgment of the approving authority, may have a deleterious effect upon the sewerage works, processes, equipment or receiving waters or which otherwise may create a hazard to life or constitute a public nuisance, the approving authority may:
  - (1) Reject the waters or wastes;
  - (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
  - (3) Require control over the quantities and rates of discharge; or
  - (4) Require payment to cover the added cost of handling and treating the waters or wastes not covered by existing taxes or sewer charges under section 46-225.
- (b) If the approving authority permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the approving authority and subject to the requirements of all applicable codes, ordinances and laws.

(Code 1976, § 29-136; Code 2002, § 94-230)

Sec. 46-227. - Prohibited discharges without approval.

- (a) No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely, in the opinion of the approving authority, that such wastes can harm either the sewers, sewage treatment process or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property or constitute a nuisance. In forming his opinion as to the acceptability of such wastes, the approving authority will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors. The following substances are prohibited:
  - (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit or 65 degrees Celsius.
  - (2) Any waters or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit, or zero degrees Celsius and 65 degrees Celsius.
  - (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower or greater shall be subject to the review and approval of the approving authority.
  - (4) Any waters or wastes containing strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not.
  - (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances, or wastes exerting an excessive chlorine requirement to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the approving authority for such materials.



- (6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations as to exceed limits which may be established by the approving authority as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies having jurisdiction for such discharge to the receiving waters.
- (7) Any radioactive wastes or isotopes of long half-life (over 100 days) without special permit; the radioactive isotopes  $I_{131}$  and  $P_{32}$  used at hospitals are not prohibited if properly diluted at the source.
- (8) Any waters or wastes having a pH in excess of 9.5.
- (9) Materials which exert or cause:
  - a. Unusual concentrations of inert suspended solids, such as, but not limited to, fuller's earth, lime slurries and lime residues; or dissolved solids, such as, but not limited to, sodium chloride and sodium sulfate.
  - b. Excessive discoloration, such as, but not limited to, dye wastes and vegetable tanning solutions.
  - c. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
  - d. Unusual volume of flow or concentration of wastes constituting slugs, as defined in this article.
- (10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (11) Subject to the review of the approving authority, any waters or wastes:
  - a. Having a five-day BOD greater than 300 parts per million by weight;
  - b. Containing more than 350 parts per million by weight of suspended solids; or
  - c. Having an average daily flow greater than two percent of the average sewage flow of the city.
- (b) Where necessary in the opinion of the approving authority, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:
  - (1) Reduce the biochemical oxygen demand to 300 parts per million by weight;
  - (2) Reduce the suspended solids to 350 parts per million by weight; or
  - (3) Control the quantities and rates of discharge of such waters or wastes.
- (c) Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the approving authority, and no construction of such facilities shall be commenced until such approvals are obtained in writing.

(Code 1976, § 29-137; Code 2002, § 94-231)

#### Sec. 46-228. - Interceptors required for certain liquid wastes.

Grease, oil and sand interceptors shall be provided when, in the opinion of the approving authority, they are necessary for the proper handling of the discharge into public sewers of liquid wastes containing grease in excessive amounts or any flammable waste, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the approving authority and shall be located so as to be readily and easily accessible for cleaning and inspection.

(Code 1976, § 29-138; Code 2002, § 94-232)

Sec. 46-229. - Maintenance and inspection of pretreatment facilities; reports required.

Where preliminary treatment or flow equalization facilities are provided for any waters or wastes, they shall be maintained continuously, satisfactorily and effectively in operation by the owner at his expense and shall be subject to periodic inspection by the approving authority. The owner shall maintain suitable monthly operating records and shall submit to the approving authority, each month, such summary reports of the character of the influent and effluent as the approving authority may prescribe.

(Code 1976, § 29-139; Code 2002, § 94-233)

Sec. 46-230. - Control manhole for observing, sampling and measuring industrial wastes.

When required by the approving authority, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such meters and other appurtenances in the building sewer as are necessary to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the approving authority. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times. Plans for such manholes for the installation of control and related equipment must be approved by the approving authority before construction is begun.

(Code 1976, § 29-140; Code 2002, § 94-234)

Sec. 46-231. - Sampling, testing and analysis of discharged wastes.

- (a) All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this division shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and shall be determined at the control manhole, if provided, or upon suitable samples taken at such control manhole. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewerage works and to determine the existence of hazards to life, limb and property. The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether a grab sample should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls, whereas pH analyses are determined from periodic grab samples.
- (b) Until an adequate analysis of a representative sample of the customer's waste has been obtained, for the purposes of this division, the approving authority may make a determination of the character and concentration of the waste by using data based on analyses of similar processes or data for this type of business that are available from the Water Pollution Control Administration of the United States Department of the Interior, or from industry-recognized authoritative sources. This method, if selected by the approving authority, shall continue at the approving authority's pleasure or until an adequate analysis has been made.

(Code 1976, § 29-141; Code 2002, § 94-235)

Secs. 46-232—46-255. - Reserved.

DIVISION 5. - USER CHARGE SYSTEM

Sec. 46-256. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Normal domestic wastewater* means wastewater that has a BOD concentration of not more than 204 mg/l and a suspended solids concentration of not more than 240 mg/l.

*Operation and maintenance* means all expenditures during the useful life of the treatment works for materials, labor, utilities, and other items which are necessary for managing and maintaining the sewage treatment works to achieve the capacity and performance for which such works were designed and constructed.

*Replacement* means expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works are designed and constructed. The term "operation and maintenance" includes replacement.

*Residential contributor* means any contributor to the city's treatment works whose lot, parcel of real estate, or building is used for domestic dwelling purposes only.

SS, denoting suspended solids, means solids that either float on the surface of or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering.

*Treatment works* means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes. These include interceptor sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling; additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined stormwater and sanitary sewer systems.

*Useful life* means the estimated period during which a treatment works will be operated.

*User charge* means that portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance, and replacement of wastewater treatment works.

*Water meter* means a water volume measuring and recording device, furnished and/or installed by the city or furnished and/or installed by a user and approved by the city.

(Code 1976, § 29-150; Code 2002, § 94-261)

Sec. 46-257. - Declaration of necessity; purpose.

It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the city to collect charges from all users who contribute wastewater to the city's treatment works. The proceeds of such charges so derived will be used for the purpose of operating and maintaining and retiring the debt for such public wastewater treatment works.

(Code 1976, § 29-149; Code 2002, § 94-262)

Sec. 46-258. - Appropriation of revenues; establishment of fund and accounts; accounting procedures.

- (a) The user charge system established in this division shall generate adequate annual revenues to pay costs of annual operation and maintenance, including replacement and cost associated with debt retirement of bonded capital associated with financing the treatment works which the city may by ordinance designate to be paid by the user charge system. That portion of the total user charge which is designated for operation and maintenance, including replacement of the treatment works, shall be established by this division.
- (b) That portion of the total user charge collected which is designated for operation and maintenance, including replacement purposes as established in section 46-259, shall be deposited in a separate nonlapsing fund known as the operation, maintenance and replacement fund and will be kept in two primary accounts as follows:
  - (1) An account designated for the specific purpose of defraying operation and maintenance costs, excluding replacement, of the treatment works (operation and maintenance account).
  - (2) An account designated for the specific purpose of ensuring replacement needs over the useful life of the treatment works (replacement account). Deposits in the replacement and reserve account shall be made annually from the operation, maintenance and replacement revenue in accordance with appendix B of Ordinance No. 3525, on file in the office of the city clerk.
- (c) Fiscal year-end balances in the operation and maintenance account and the replacement account shall be carried over to the same accounts in each subsequent fiscal year and shall be used for no other purposes than those designated for these accounts. Monies which have been transferred from other sources to meet temporary shortages in the operation, maintenance and replacement fund shall be returned to their respective accounts upon appropriate adjustment of the user charge rates for operation, maintenance and replacement. The user charge rates shall be adjusted such that the transferred monies will be returned to their respective accounts within the fiscal year following the fiscal year in which the monies were borrowed.

(Code 1976, § 29-151; Code 2002, § 94-263)

Sec. 46-259. - User charges.

- (a) Each user shall pay for the services provided by the city based on his use of the treatment works as determined by water meters acceptable to the city.
- (b) For residential contributors, monthly user charges will be based on average monthly water usage during the months of January, February and March. If a residential contributor has not established a January, February and March average, the monthly user charge shall be the median charge of all other residential contributors.
- (c) For industrial and commercial contributors, user charges shall be based on water used during the current month. If a commercial or industrial contributor has a consumptive use of water or in some other manner uses water which is not returned to the wastewater collection system, the user charge for that contributor may be based on wastewater meters or separate water meters installed and maintained at the contributor's expense, and in a manner acceptable to the city.
- (d) The minimum charge per month shall be in an amount as provided in the city fee schedule. In addition, each contributor shall pay a user charge rate for operation and maintenance, including replacement, in an amount as provided in the city fee schedule per 1,000 gallons of water as determined in subsections (b) and (c) of this section.
- (e) For those contributors who contribute wastewater, the strength of which is greater than normal domestic sewage, a surcharge in addition to operation and maintenance including replacement as provided in the city fee schedule will be charged.
- (f) Any user who discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge from the city's treatment works or any user who discharges any substance which, singly or by interaction with other substances, causes identifiable increases in the cost of op-

eration, maintenance, or replacement of the treatment works shall pay for such increased costs. The charge to each such user shall be as determined by the responsible plant operating personnel and approved by the city council.

- (g) The user charge rates established in this article apply to all users of the city's treatment works, regardless of their location.

(Code 1976, § 29-152; Code 2002, § 94-264)

**Editor's note**— Appendix A of Ordinance No. 3525, which establishes the actual rate use structure, is not included within the Code, but may be found on file in the office of the city clerk.

Sec. 46-260. - Annual review of charges.

- (a) The city shall review the user charge system established in this division every year and shall revise user charge rates as necessary to ensure that the system generates adequate revenues to pay the costs of operation and maintenance, including replacement, and that the system continues to provide for the proportional distribution of operation and maintenance, including replacement, costs among users.
- (b) The city will notify each user at least annually, in conjunction with a regular bill, of the rate being charged for operation and maintenance, including replacement, of the treatment works.

(Code 1976, § 29-154; Code 2002, § 94-265)

Secs. 46-261—46-323. - Reserved.

#### ARTICLE IV. - WATER

##### DIVISION 1. - GENERALLY

Sec. 46-324. - Manner of laying water service pipes generally.

All water service pipes shall be laid across the improved portions of the roadway by methods prescribed by the director of public works.

(Code 1976, § 29-30; Code 2002, § 94-14)

Sec. 46-325. - Consumers to maintain own service.

All persons taking any utility service from the city shall keep their own service pipes, cocks and apparatus in good repair, shall protect the service pipes, cocks and apparatus from frost at their own risk and expense, and shall prevent all unnecessary waste.

(Code 1976, § 29-31; Code 2002, § 94-15)

Sec. 46-326. - Minimum diameter of water mains.

No municipal water main installed as a primary source of water for more than four residential dwellings or which could be extended in the future for the purpose of serving more than four dwellings shall be

less than six inches in diameter. In no case shall water mains having any diameter of less than six inches be installed or extended more than 1,000 feet from a six-inch water main.

(Code 1976, § 29-32; Code 2002, § 94-16)

Sec. 46-327. - Shutting off water for violation; reconnection fee.

- (a) The city reserves the right to shut off the supply of water to any consumer at any location for a violation of any of the city's rules and regulations relating to the water and sewer system.
- (b) The utility office shall give notice in writing to the customer by United States mail, postage prepaid, to the billing address of such customer as shown on the application originally made for water service or on any correction to such application as to mailing address or, if no such mailing address is set forth, to the address of the premises where the water was consumed. The notice shall set forth the violation of the rule or regulation complained of, and if, within five days of the date of the notice, such violation has not ceased, the utility office shall certify such fact to the director of public works, and the water department shall forthwith discontinue and shut off the water service to such customer.
- (c) A failure on the part of the customer to actually receive the notice as set forth in subsection (b) of this section shall not be an excuse, reason or justification for the failure to correct the violation, nor shall it prevent the discontinuance and shutting off of the water service to such customer.
- (d) After water service has been discontinued and shut off as provided in this section, it shall not be renewed or resumed until all bills for water service due and owing to the city have been paid, the deposit for service required by article II of this chapter has been made, and the actual cost of the discontinuance and shutting off of the service has been paid.

(Code 1976, § 29-33; Code 2002, § 94-17)

Secs. 46-328—46-349. - Reserved.

## DIVISION 2. - PRIVATE WELLS

Sec. 46-350. - Prohibited.

- (a) Except as provided in subsection (b) of this section, it is hereby declared to be unlawful for any person within the corporate limits of the city to use water from a private water well.
- (b) This section shall not apply to:
  - (1) Any existing zoning lot, the outside boundaries of which are located in excess of 100 lineal feet from the nearest public water main or line.
  - (2) A water well used only for the purpose of operating a ground source heating and cooling system in compliance with the provisions of article IV of this chapter, or as such article may hereafter be amended from time to time;
  - (3) Private water wells, which are now in existence or in process; those that may hereafter be lawfully drilled where no public service is available; and those in newly annexed areas; provided that they meet all other requirements set forth in this chapter.

(Code 2002, 94-326; Ord. No. 3736, § 1, 9-15-2001)

Sec. 46-351. - Penalty for violations; continuing violations.

- (a) Any person who violates any provision of this division of the city shall be guilty of an offense and, upon conviction, shall be punished by a fine of not more than \$500.00.
- (b) Each day a violation of this division continues shall constitute a separate offense.

(Code 2002, 94-327; Ord. No. 3736, § 2, 9-15-2001)

Secs. 46-352—46-364. - Reserved.

### DIVISION 3. - CROSS CONNECTION CONTROL

#### Sec. 46-365. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Air gap separation* means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the overflow level rim of the receptacle and shall be at least double the diameter of the supply pipe measured vertically above the flood level rim of the vessel, but in no case less than one inch.

*Auxiliary water supply* means any water source or system, other than the public water supply, that may be available in the building or premises.

*Backflow* means the flow, other than the intended direction of flow, of any foreign liquids, gases or substances into the distribution system of a public water supply.

*Backflow prevention device* means any device, method or type of construction intended to prevent backflow into a potable water system.

*Consumer* means the owner or person in control of any premises supplied by or in any manner connected to a public water system.

*Containment* means protection of the public water supply by installing a cross connection control device or air gap separation on the main service line to a facility.

*Contamination* means an impairment of the quality of the water by sewage, process fluids, or other wastes to a degree which could create an actual hazard to the public health through poisoning or through spread of disease by exposure.

*Cross connection* means any physical link between a potable water supply and any other substance, fluid or source, which makes possible contamination of the potable water supply due to the reversal of flow of the water in the piping or distribution system.

*Hazard, degree of*, means an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system. Hazards are further defined as follows:

*Health hazard* means any condition, device or practice in the water supply system and its operation which could create or may create a danger to the health and well-being of the water consumer.

*Plumbing hazard* means a plumbing-type cross connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air gap separation or backflow prevention device.

*Pollutional hazard* means an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system but which would constitute a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances, but would not be dangerous to health.

*System hazard* means an actual or potential threat of severe damage to the physical properties of the public potable water system or to the consumer's potable water system, or of pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

*Industrial process system* means any system containing a fluid or solution, which may be chemically, biologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollutional or plumbing hazard if introduced into a potable water supply.

*Isolation* means protection of a facility service line by installing a cross connection control device or air gap separation on an individual fixture, appurtenance or system.

*Pollution* means the presence of any foreign substance (organic, inorganic or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.

*Public potable water system* means any publicly or privately owned water system supplying water to the general public which is satisfactory for drinking, culinary, and domestic purposes and meets the requirements of the state department of natural resources.

*Service connection* means the terminal end of a service line from the public water system. If a meter is installed at the end of the service, the service connection means the downstream end of the meter.

*Water purveyor* means the owner, operator or individual in responsible charge of a public water system.

(Code 1976, § 29-187; Code 2002, § 94-291)

Sec. 46-366. - Purpose.

The purpose of this article is to:

- (1) Protect the public potable water supply from contamination or pollution by containing within the consumer's internal distribution system or private water system contaminants or pollutants which could backflow through the service connection into the public potable water supply system.
- (2) Promote the elimination, containment, isolation or control of existing cross connections, actual or potential, between the public or consumer's potable water system and nonpotable water systems, plumbing fixtures and industrial process systems.
- (3) Provide for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of all potable water systems.

(Code 1976, § 29-186(a); Code 2002, § 94-292)

Sec. 46-367. - Applicability.

This article shall apply to all premises served by the city's public potable water system.



(Code 1976, § 29-186(b); Code 2002, § 94-293)

Sec. 46-368. - Policy.

- (a) This article will be reasonably interpreted by the water purveyor. It is the water purveyor's intent to recognize the varying degrees of hazard and to apply the principle that the degree of protection shall be commensurate with the degree of hazard.
- (b) The water purveyor shall be primarily responsible for protection of the public potable water distribution system from contamination or pollution due to backflow of contaminants or pollutants through the water service connection. The cooperation of all consumers is required to implement and maintain the program to control cross connections. The water purveyor and consumer are jointly responsible for preventing contamination of the water system.
- (c) If, in the judgment of the water purveyor, cross connection protection is required through either piping modification or installation of an approved backflow prevention device, due notice shall be given to the consumer. The consumer shall immediately comply by providing the required protection at his own expense. Failure, refusal or inability on the part of the consumer to provide such protection shall constitute grounds for discontinuing water service to the premises until such protection has been provided.

(Code 1976, § 29-186(c); Code 2002, § 94-294)

Sec. 46-369. - Violations.

- (a) The water purveyor shall deny or discontinue, after reasonable notice to the occupants thereof, the water service to any premises wherein any backflow prevention device required by this article is not installed, tested and maintained in a manner acceptable to the water purveyor or if it is found that the backflow prevention device has been removed or bypassed or if an unprotected cross connection exists on the premises.
- (b) Water service to such premises shall not be restored until the consumer has corrected or eliminated such conditions or defects in conformance with this article to the satisfaction of the water purveyor.

(Code 1976, § 29-195; Code 2002, § 94-295)

Sec. 46-370. - Cross connections prohibited.

No water service connection shall be installed or maintained:

- (1) To any premises where actual or potential cross connections to the public potable or consumer's water system may exist unless such actual or potential cross connections are abated or controlled to the satisfaction of the water purveyor and as required by the laws and regulations of the state department of natural resources.
- (2) Whereby an auxiliary water supply may enter a public potable or consumer's water system unless such auxiliary water supply and the method of connection and use of such supply shall have been approved by the water purveyor and the state department of natural resources.
- (3) In any premises in which the plumbing system, facilities and fixtures have not been constructed and installed using acceptable plumbing practices considered by the water purveyor as necessary for the protection of health and safety.

(Code 1976, § 29-188; Code 2002, § 94-296)

Sec. 46-371. - Survey and investigations.

- (a) The consumer's premises shall be open at all reasonable times to the water purveyor for conducting surveys and investigations of water use practices within the consumer's premises to determine whether there is actual or potential cross connection to the consumer's water system through which contaminants or pollutants could backflow into public potable water systems.
- (b) On request by the water purveyor, the consumer shall furnish information on water use practices within his premises.
- (c) It shall be the responsibility of the water consumer to conduct periodic surveys of water use practices on his premises to determine whether there are actual or potential cross connections to his water system through which contaminants or pollutants could backflow into his or the public potable water system.

(Code 1976, § 29-189; Code 2002, § 94-297)

Sec. 46-372. - Type of protection required.

The type of protection required by this article shall depend on the degree of hazard which exists, as follows:

- (1) Approved air gap separation shall be installed where the public water system may be contaminated with substances that could cause a severe health hazard.
- (2) An approved air gap separation or an approved reduced pressure principle backflow prevention device shall be installed where the public potable water system may be contaminated with a substance that could cause a system or health hazard.
- (3) An approved air gap separation or an approved reduced pressure principle backflow prevention device or an approved double check valve assembly shall be installed where the public potable water system may be polluted with substances that could cause a polluttional hazard not dangerous to health.

(Code 1976, § 29-190; Code 2002, § 94-298)

Sec. 46-373. - Protection required.

- (a) An approved backflow prevention device shall be installed in each service line to a consumer's water system serving premises where, in the judgment of the water purveyor or the state department of natural resources, actual or potential hazards to the public potable water system exist. The type and degree of protection required shall be commensurate with the degree of hazard.
- (b) An approved air gap separation or reduced pressure principle backflow prevention device shall be installed at the service connection or within any premises where, in the judgment of the water purveyor or the state department of natural resources, the nature and extent of activities on the premises or the materials used in connection with the activities or materials stored on the premises would present an immediate and dangerous hazard to health should a cross connection occur, even though such cross connection may not exist at the time the backflow prevention device is required to be installed. This includes, but is not limited to, premises:
  - (1) Having an auxiliary water supply, unless the quality of the auxiliary supply is acceptable to the water purveyor and the state department of natural resources.
  - (2) Having internal cross connections that are not correctable, or intricate plumbing arrangements which make it impractical to ascertain whether or not cross connections exist.
  - (3) Where entry is restricted so that inspection for cross connections cannot be made with sufficient frequency or at sufficiently short notice to ensure the cross connections do not exist.
  - (4) Having a repeated history of cross connections being established or reestablished.

- (5) Which, due to the nature of the enterprise therein, are subject to recurring modification or expansion.
  - (6) On which any substance is handled under pressure so as to permit entry into the public water supply, or where a cross connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters.
  - (7) Where materials of a toxic or hazardous nature are handled such that if backsiphonage or backpressure should occur, a serious health hazard may result.
- (c) The following types of facilities fall into one or more of the categories of premises where an approved air gap separation or reduced pressure principle backflow prevention device is required by the water purveyor and the state department of natural resources to protect the public water supply and must be installed at these facilities unless all hazardous or potentially hazardous conditions have been eliminated or corrected by other methods to the satisfaction of the water purveyor and the state department of natural resources:
- (1) Aircraft and missile plants.
  - (2) Automotive plants.
  - (3) Auxiliary water systems.
  - (4) Beverage bottling plants.
  - (5) Canneries, packinghouses, and reduction plants.
  - (6) Car washing facilities.
  - (7) Chemical manufacturing, processing, compounding or treatment plants.
  - (8) Film laboratories.
  - (9) Fire protection systems.
  - (10) Hazardous waste storage and disposal sites.
  - (11) Hospitals, mortuaries, clinics.
  - (12) Irrigation and sprinkler systems.
  - (13) Laundries and dye works.
  - (14) Metal manufacturing, cleaning, processing and fabricating plants.
  - (15) Oil and gas production, storage or transmission properties.
  - (16) Paper and paper products plants.
  - (17) Plating plants.
  - (18) Power plants.
  - (19) Printing and publishing facilities.
  - (20) Radioactive material processing plants or nuclear reactors.
  - (21) Research and analytical laboratories.
  - (22) Rubber plants, natural and synthetic.
  - (23) Sewage and storm drainage facilities.
  - (24) Waterfront facilities and industries.

(Code 1976, § 29-191; Code 2002, § 94-299)

Sec. 46-374. - Standards for backflow prevention devices.

- (a) Any backflow prevention device required by this article shall be of a model or construction approved by the water purveyor and the state department of natural resources.
- (b) Air gap separation to be approved shall be at least 2 ½ times the diameter of the supply pipe, measured vertically above the top rim of the vessel, but in no case less than one inch.
- (c) A double check valve assembly or a reduced pressure principle backflow prevention device shall be approved by the water purveyor, and shall appear in the current list of approved backflow prevention devices established by the state department of natural resources.
- (d) Existing backflow prevention devices approved by the water purveyor at the time of installation and properly maintained shall, except for the inspection and maintenance requirements, be excluded from the requirements of this article so long as the water purveyor is assured that they will satisfactorily protect the water system. Whenever the existing device is moved from its present location or requires more than minimum maintenance or when the water purveyor finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow prevention device meeting the requirements of this article.

(Code 1976, § 29-192; Code 2002, § 94-300)

Sec. 46-375. - Installation of backflow prevention devices.

- (a) Backflow prevention devices required by this article shall be installed at a location and in a manner approved by the water purveyor and shall be installed at the expense of the water consumer.
- (b) Backflow prevention devices installed on the service line to the consumer's water system shall be located on the consumer's side of the water meter, as close to the meter as is reasonably practical, and prior to any other connection.
- (c) Backflow prevention devices shall be located so as to be readily accessible for maintenance and testing and protected from freezing.

(Code 1976, § 29-193; Code 2002, § 94-301)

Sec. 46-376. - Inspection and maintenance of backflow prevention devices.

- (a) It shall be the duty of the consumer at any premises on which backflow prevention devices required by this article are installed to have inspections, tests and overhauls made in accordance with the following schedule or more often where inspections indicate a need:
  - (1) Air gap separations shall be inspected at the time of installation and at least every 12 months thereafter.
  - (2) Double checkvalve assemblies shall be inspected and tested for tightness at the time of installation and at least every 12 months thereafter. They shall be dismantled, inspected internally, cleaned, and repaired whenever needed and at least every 30 months.
  - (3) Reduced pressure principle backflow prevention devices shall be inspected and tested for tightness at the time of installation and at least every 12 months thereafter. They shall be dismantled, inspected internally, cleaned, and repaired whenever needed and at least every five years.
- (b) Inspections, tests and overhauls of backflow prevention devices shall be made at the expense of the water consumer and shall be performed by a state-certified backflow prevention device tester.
- (c) Whenever backflow prevention devices required by this article are found to be defective, they shall be repaired or replaced at the expense of the consumer without delay.
- (d) The water consumer must maintain a complete record of each backflow prevention device from purchase to retirement. This shall include a comprehensive listing that includes a record of all tests, in-

spections and repairs. Records of inspections, tests, repairs and overhauls shall be made available to the water purveyor upon request.

- (e) Backflow prevention devices shall not be bypassed, made inoperative, removed or otherwise made ineffective without specific authorization by the water purveyor.

(Code 1976, § 29-194; Code 2002, § 94-302)

Secs. 46-377—46-392. - Reserved.

#### DIVISION 4. - METERS

Sec. 46-393. - Testing meters generally.

Each meter used in determining the amount of utility service supplied by the city shall, by comparison with accurate standards, be tested and calibrated by the city. If a meter is found incorrect or inaccurate, it shall be restored to an accurate condition, or a new meter shall be substituted.

(Code 1976, § 29-35; Code 2002, § 94-19)

Sec. 46-394. - Testing meter at consumer's request.

The consumer of utility service shall have the right to request that a special meter test be made at any time. If any test made at the consumer's request discloses that the meter tested is registering correctly or within two percent of normal, the consumer shall bear the expense of such test. The expense of all other tests shall be borne by the city.

(Code 1976, § 29-36; Code 2002, § 94-20)

Sec. 46-395. - Correction of incorrect meter readings.

Any utility meter tested and found to be not more than two percent above or below normal shall be considered to be correct and accurate insofar as correction of billing is concerned. If, as a result of any test, any meter is found to register in excess of two percent either above or below normal, the readings of such meter previously taken for billing purposes shall be corrected according to the percentage of inaccuracy so found, but no such correction shall be extended beyond 90 days previous to the day on which the inaccuracy is discovered by such test.

(Code 1976, § 29-37; Code 2002, § 94-21)

Sec. 46-396. - Injuring, tampering with meters.

It shall be unlawful for any person other than a duly authorized city employee to alter, change, deface, remove, interfere with, open or in any other way molest any meter in the city used for supplying any utility service to any consumer thereof in the city.

(Code 1976, § 29-38; Code 2002, § 94-22)

Sec. 46-397. - Estimation of bill for incorrect meter.

If a meter fails at any time to register the quantity of utility service consumed, the quantity shall be determined by the readings of the meter during the three months preceding the time for which such failure to register occurs and a bill shall be made for the average thus found.

(Code 1976, § 29-39; Code 2002, § 94-23)

Sec. 46-398. - Drought emergency.

- (a) A drought emergency shall be in force and effect when the city council, after considering the mechanical condition of the water treatment systems, the raw water supplies, the integrity of the transmission and distribution piping systems, the water level in existing storage tanks, the anticipated water usage rates, the nature and extent of the emergency, if any, and other pertinent factors in arriving at a decision as to when water conservation measures are required, declares the existence of a drought emergency.
- (b) Users and customers shall comply with the following restrictions when using water supplied by the city or when using water supplied by an independent source:
  - (1) No outdoor commercial or noncommercial watering, whether public or private, shall occur until further notice.
  - (2) All fountains, reflecting pools, and artificial waterfalls used for ornamental purposes will be terminated.
  - (3) All landscaping and water systems will be shut off.

(Code 2002, § 94-27; Ord. No. 3684, § 29-46, 7-17-2000)

Secs. 46-399—46-414. - Reserved.

#### ARTICLE V. - STORMWATER MANAGEMENT

Secs. 46-442—46-454. - Reserved.

#### DIVISION 3. - LAND DISTURBANCE

Sec. 46-455. - Purpose.

The purpose of this division is to establish controls on activities related to land disturbance through the following objectives:

- (1) To protect the quality of local streams, lakes, and other bodies of water from the effects of increased erosion and sediment discharge.
- (2) To protect the welfare of individuals and their property by reducing the amount of sediment that leaves land disturbance sites.
- (3) To protect the environment and aquatic habitat of fish and other species.
- (4) To reduce the need for maintenance of storm sewers and ditches as well as the dredging of lakes and ponds.

(Code 2002, 94-350; Ord. No. 4154, 4-19-2010)

Sec. 46-456. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Erosion and sediment control field manual* gives requirements and guidance relating to land disturbance, similar to the stormwater management erosion and sediment control manual volume I, but only addresses field requirements and guidance relating to land disturbance. It is intended to be used by the person performing the land disturbance and not the design engineer that develops the plans.

*Erosion and sediment control manual* gives requirements and guidance relating to land disturbance.

*Erosion control* is any method, including the use of best management practices, which reduces the potential for soil particles to become dislodged and carried by wind or water.

*ESC manager* is the person responsible for ensuring that the site is in accordance with the standard ESC permit as well as performing site inspections and maintaining the required records.

*ESC permit* refers to the permit obtained from the city engineering department prior to commencement of land-disturbing activities as defined in the most current erosion and sediment control manual.

*Land disturbance* includes the grading, digging, cutting, scraping, or excavating of soil; placement of fill materials; paving; construction; substantial removal of vegetation; or any activity that bares soil or rock or involves the diversion or piping of any natural or manmade watercourse.

*Sediment control* is any method, including the use of best management practices, used to capture or contain sediment particles after they have been eroded.

*Stop work order* refers to a written notice posted at the site of land disturbance by the city's ESC inspector that requires land-disturbance activities cease until requirements of the stop work order are met and a signed stop work order release form is obtained. The stop work order is enforceable by section 1-10.

*Stormwater coordinator* refers to a position within the engineering department of the city that has the authority and responsibility to manage, enforce, and regulate land-disturbance activities within the city.

(Code 2002, 94-351; Ord. No. 4154, 4-19-2010)

Sec. 46-457. - Requirements.

- (a) The city shall administer and enforce this division with the issuance of ESC permits. Requirements and guidance for the ESC permit are contained within the most current edition of the erosion and sediment control manual with a supplemental erosion and sediment control field manual.
- (b) Before conducting land-disturbance activities that are equal to or greater than one acre, or are part of a larger common plan of development or sale that will disturb one or more acres over the life of the project within the city limits, an ESC permit must be obtained.
- (c) Before conducting land-disturbance activities when installing utilities with 1,000 feet or more of length within the city limits, an ESC permit must be obtained.
- (d) Before conducting land-disturbance activities located within 100 feet of a drainageway within the city limits, an ESC permit must be obtained.
- (e) Before conducting excavation of 50 or more cubic yards of material, not related to the building of a detached single-family residential unit within the city limits, an ESC permit must be obtained.
- (f) Land-disturbance activities less than one acre in size in the city may require erosion and sediment control measures if the stormwater coordinator deems it necessary to prevent sediment and erosion from occurring.

- (g) Erosion and sediment control manual with a supplemental erosion and sediment control field manual may be updated and expanded from time to time at the discretion of the city based on improvements in engineering, science, monitoring, and local maintenance experience.
- (h) In addition to the requirements set forth by the city, all other local, state, and federal permits, ordinances, laws, and regulations relating to land disturbance must be followed. Any construction or land-disturbance activity that will result in the disturbance of one acre or more must obtain a land disturbance permit from the state department of natural resources.

(Code 2002, 94-352; Ord. No. 4154, 4-19-2010)

Sec. 46-458. - Fees.

Fees are shown in the appendix of the most current version of the erosion and sediment control manual.

(Code 2002, 94-353; Ord. No. 4154, 4-19-2010)

Sec. 46-459. - Inspections.

All land-disturbance activities shall be subject to inspection by the city. Representatives of the city shall have the right to enter upon any land for the purposes of making an inspection or acquiring information to determine whether or not the property conforms to the requirements of this division.

(Code 2002, 94-354; Ord. No. 4154, 4-19-2010)

Sec. 46-460. - Enforcement.

The stormwater coordinator, a position within the engineering department of the city, shall have the authority and responsibility to manage, enforce, and regulate land-disturbance activities within the city.

(Code 2002, 94-355; Ord. No. 4154, 4-19-2010)

Sec. 46-461. - Violations.

- (a) All persons are required to obtain a standard ESC permit before performing any land-disturbance activities that are stated in this Code. If land-disturbance activities are performed without a permit, but require one, the stormwater coordinator will place a posted stop work order at the location of the land-disturbance activity. This stop work order shall state what is required prior to continuing the land-disturbance activity. If the stop work order is removed by anyone other than the city, or the land-disturbance act continues without following the requirements of the stop work order, then the person performing the work and the owner of the property are in violation of the land disturbance code and are subjected to section 1-10. In order to begin land-disturbance activities after receiving a stop work order, a signed stop work order release form must be obtained from the stormwater coordinator.
- (b) The city can also require any person to obtain a standard ESC permit for any land-disturbance activity of any size, if it has the potential of endangering others or degrading the environment and the stormwater coordinator feels that this can be reduced by obtaining an ESC permit. In this case, the stormwater coordinator must contact the person by placing a posted stop work order at the location of the land-disturbance activity. This stop work order shall state what is required prior to continuing the land-disturbance activity. If the stop work order is removed by anyone other than the city, or the land-disturbance act continues without following the requirements of the stop work order, then the person performing the work and the owner of the property are in violation of the land-disturbance



code and are subjected to section 1-10. In order to begin land-disturbance activities after receiving a stop work order, a signed stop work order release form must be obtained from the stormwater coordinator.

- (c) Failure to comply with any term, condition, limit, deadline or other provision of the ESC permit constitutes a violation of the West Plains Land Disturbance Ordinance.
- (d) The city may recover all attorneys' fees, court costs, stabilization of disturbed areas, cleanup costs, and other expenses associated with enforcement of this division through required fiscal securities and any other forms available.

(Code 2002, 94-356; Ord. No. 4154, 4-19-2010)

Sec. 46-462. - Appeal of notice of violations.

Any person receiving a notice of violation may appeal the determination of the stormwater coordinator. The notice of appeal must be received within 15 days from the date of the notice of violation in written form. Hearing on the appeal before the city administrator shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the city administrator shall be final.

(Code 2002, 94-357; Ord. No. 4154, 4-19-2010)

Secs. 46-463—46-478. - Reserved.

#### DIVISION 4. - STORMWATER CONVEYANCE SYSTEMS

Secs. 46-479—46-494. - Reserved.

#### DIVISION 5. - ILLICIT DISCHARGE

Sec. 46-495. - Purpose.

The purpose of this division is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This division establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this division are:

- (1) To regulate the contribution of pollutants to the city's separate storm sewer system by any person.
- (2) To prohibit illicit connections and discharges to the city's separate storm sewer system.
- (3) To prevent non-stormwater discharges generated as a result of spills, inappropriate dumping, or disposal from entering the city's storm sewer system.
- (4) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this division.

(Code 2002, 94-370; Ord. No. 4155, 4-19-2010)

Sec. 46-496. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Hazardous materials* means 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 connection* is defined as either of the following: any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or any drain or conveyance connected from a commercial or industrial use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

*Illicit discharge* means a measurable flow (normally observable during dry weather) containing pollutants and/or pathogens in or leaving a stormwater conveyance structure.

*Non-stormwater discharge* means any discharge to the storm drain system that is not composed entirely of stormwater.

*Pollutant* means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that some 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.

*Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*Storm drainage system* means the 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, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and manmade or altered drainage channels, reservoirs, and other drainage structures.

*Stormwater conveyance structure* is defined as pipes, junction boxes, inlet boxes, and open channels used to transport stormwater.

*Stormwater coordinator* refers to a position within the engineering department of the city that has the authority and responsibility to manage, enforce, and regulate illicit discharges within the city.

*Wastewater* is any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

(Code 2002, 94-371; Ord. No. 4155, 4-19-2010)

Sec. 46-497. - Discharge prohibitions.

- (a) No person shall throw, drain, discharge, cause to be discharged, or allow others under its control to throw, drain, or otherwise discharge into the city's separate storm sewer 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, other than stormwater.

- (b) The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited except for the discharges described as follows:
- (1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, and any other water source not containing pollutants.
  - (2) Discharges or flows from firefighting activities and other discharges specified in writing by the city as being necessary to protect public health and safety.
  - (3) Dye testing is an allowable discharge, but requires notification to the authorized enforcement agency prior to the time of the test.
  - (4) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES 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 drain system.
  - (5) Illicit connections in violation of this division must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the city.

(Code 2002, 94-372; Ord. No. 4155, 4-19-2010)

Sec. 46-498. - Prohibition of illicit connections.

- (a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- (b) 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.
- (c) A person is considered to be in violation of this division if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(Code 2002, 94-373; Ord. No. 4155, 4-19-2010)

Sec. 46-499. - Notification of discharges and spills.

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity, or operation, or responsible for emergency response for a facility, activity, or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the city separate storm sewer system, state waters, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.
- (b) Said person shall notify the city within 24 hours of the nature, quantity, and time of occurrence of the discharge. If the discharge of prohibited materials originates 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. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

- (c) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be notified immediately.

(Code 2002, 94-374; Ord. No. 4155, 4-19-2010)

Sec. 46-500. - Enforcement.

- (a) Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this division, the city may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
  - (1) The performance of monitoring, analyses, and reporting.
  - (2) The elimination of illicit connections or discharges.
  - (3) That violating discharges, practices, or operations shall cease and desist.
  - (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property.
  - (5) Payment of a fine to cover administrative and remediation costs.
  - (6) The implementation of source control or treatment best management practices (BMPs).
- (b) 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. Should the violator fail to remediate or restore within the established deadline, the work may be done by a designated government agency or a contractor and the expense thereof shall be charged to the violator.

(Code 2002, 94-375; Ord. No. 4155, 4-19-2010)

Sec. 46-501. - Inspection.

- (a) The city shall be permitted to enter and inspect facilities subject to regulation under this division as often as may be necessary to determine compliance with this division. 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 the city stormwater coordinator and/or his representatives.
- (b) Facility operators shall allow the city ready 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 an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (c) The city shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (d) The city has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

- (f) Unreasonable delays in allowing the city access to a permitted facility is a violation of a stormwater discharge permit and of this division. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this division.
- (g) If the city has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this division, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this division or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any competent jurisdiction.

(Code 2002, 94-376; Ord. No. 4155, 4-19-2010)

Sec. 46-502. - Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the stormwater coordinator. The notice of appeal must be received within 15 days from the date of the notice of violation. Hearing on the appeal before the city administrator shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the administrator shall be final.

(Code 2002, 94-377; Ord. No. 4155, 4-19-2010)

Sec. 46-503. - Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or in the event of an appeal, within 15 days of the decision of the administrator upholding the decision of the stormwater coordinator, then representatives of the stormwater coordinator shall 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Code 2002, 94-378; Ord. No. 4155, 4-19-2010)

Sec. 46-504. - Cost of abatement of the violation.

Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the administrator or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person in violation of any of the provisions of this article shall become liable to the city by reason of such violation.

(Code 2002, 94-379; Ord. No. 4155, 4-19-2010)

Sec. 46-505. - Remedies not exclusive.

- (a) The remedies listed in this division 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.

- (b) In lieu of enforcement proceedings, penalties, and remedies authorized by this division, the authorized enforcement agency may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(Code 2002, 94-380; Ord. No. 4155, 4-19-2010)

Sec. 46-506. - Criminal prosecution.

- (a) Any person that has violated or continues to violate this division shall be subject to section 1-10.
- (b) The authorized enforcement agency may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this division, including sampling and monitoring expenses.

(Code 2002, 94-381; Ord. No. 4155, 4-19-2010)

Secs. 46-507—46-522. - Reserved.

#### DIVISION 6. - STORMWATER QUALITY AND QUANTITY

Secs. 46-523—46-538. - Reserved.

#### DIVISION 7. - STREAM BUFFERS

Secs. 46-539—46-555. - Reserved.

#### DIVISION 8. - SINKHOLE

Secs. 46-556—46-571. - Reserved.

#### ARTICLE VI. - ELECTRIC UTILITY

Sec. 46-572. - Meter required for electricity users.

No electric current shall be supplied to any consumer except through a meter, which meter shall be furnished and installed by the city and shall be under the exclusive control, jurisdiction and supervision of the city.

(Code 1976, § 29-28; Code 2002, § 94-12)

Sec. 46-573. - Unlawfully connecting and using electricity.

- (a) No person shall, without the consent of the city:

- (1) Unlawfully and intentionally convert to his use or the use of another person from any city wire or conductor any portion of the electric current or electricity distributed by the city;
  - (2) Unlawfully and intentionally prevent such current or any portion thereof from passing through any meter provided for measuring the electric current or electricity;
  - (3) Unlawfully and intentionally prevent such meter from registering correctly the current passing through it;
  - (4) Aid in any manner the unlawful conversion to his use or the use of another of any portion of such electric current; or
  - (5) Knowingly accept or receive the use and benefit of electric current which should pass through a meter but which has been diverted therefrom or which has been prevented from being correctly registered by a meter provided therefor or which has been diverted from the city wires or conductors.
- (b) The presence at any time on or about the meters, wires or conductors of any device whatsoever which affects the diversion of electric current without the electric current being measured or registered by the city shall constitute prima facie evidence of knowledge on the part of the person, who as owner or lessee or otherwise at the time has the use, custody or control of the room or building where such device exists, of the existence thereof and the effect thereof and shall further constitute prima facie evidence of the intention on the part of such person to defraud. If a check meter installed by the city registers more current than is registered by the meter installed in the customer's premises, such condition shall constitute prima facie evidence that such unregistered current has been wrongfully diverted by the customer and shall further constitute prima facie evidence of the intention on the part of such customer to defraud.

(Code 1976, § 29-29; Code 2002, § 94-13)

## **Article VII. Fiber Utility**

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**46-600: PURPOSE:** The purpose of this Chapter is to establish a City owned Fiber Optic System which provides broadband access to meet the needs of:

A. City Departments

B. Public Safety Organizations

C. Other Publicly Owned and Operated Facilities

D. Community Anchor Institutions

E. Businesses

F. Residents

To protect the economic vitality of the City by providing the broadband transport service and fiber facilities leasing required by broadband service providers.

To foster competition among retail broadband service providers by providing open Access to the City Fiber Optic System.

To protect the cost of broadband services by eliminating anti-competitive pricing schemes or monopolistic practices which contribute to higher costs for broadband services.

**46-601: DEFINITIONS:** Certain terms used in this chapter shall have the meanings ascribed below:

**ACCESS:** Access to or use of the Fiber System in the form of either broadband transport service or Dark Fiber leasing.

**CITY:** The City of West Plains.



**INTERNET ACCESS OPERATOR:** Any person employed by the City of West Plains' fiber optic internet department.

**CUSTOMER:** Any business or residential location purchasing internet service from the City of West Plains.

**DARK FIBER:** Any unused fiber cable that is available for potential use.

**DEMARCATION POINT:** The point of connection on an Optical Network Terminal or Network Interface Device at which the City Fiber Optic System ends and a point of interconnection is established for the customer's use.

**DIRECTOR:** The Director of the City Fiber Internet Department, or his or her appointed designee.

**FIBER OPTIC SYSTEM:** The City owned Fiber Optic System, including all fiber, facilities, equipment and appurtenances.

**PLANT:** Plant refers to all of the physical cabling and supporting infrastructure (such as conduit, cabinets, tower or poles), and any associated hardware (such as [repeaters](#)) located between a [demarcation point](#) in a switching [facility](#) and a demarcation point in another [switching center](#) or [customer premises](#).

**PROVIDER:** A retail broadband service provider.

**SERVICE:** Any future or current, retail or customer broadband service which may be transported utilizing the Fiber Optic System.

**SUBSCRIBER:** A current or potential internet service Customer.

**TRANSPORT:** Broadband transport service consisting of Ethernet services as supported by the City Fiber System.

**46-602: OWNERSHIP, CONTROL AND MANAGEMENT:** The City shall have exclusive and complete ownership, control and management of the Fiber Optic System within all Demarcation Points, which shall include the device or interface provided for interconnection. The City may make such rules and regulations as are necessary for the operation of the Fiber Optic System both inside and outside the City limits.

**46-603: NO OBLIGATION TO SERVE:** The City shall have no obligation to provide Access to any provider or subscriber. The City reserves the right to limit or refuse Access at its sole discretion, provided access shall not be denied or limited on the basis of race, religion, age, national origin, or gender.

**46-604: APPLICABILITY:** The provisions of this chapter shall apply only to the Fiber Optic System. Nothing herein shall be construed or deemed to regulate the delivery of communications or data services over or across lines, facilities, or equipment owned by a private communications provider, or which may be located in the public right-of-way pursuant to a franchise, lease, or other license or privilege granted by the City.

**46-605: TRANSFER OF RIGHTS PROHIBITED:** All rights to Access, and any rights or privileges arising under the provisions of this Chapter shall not be transferred to any person or entity without the express written approval of the Director.

**46-605: BILLINGS:** Fiber Optic System Access provided by the City shall be billed to the Customer in accordance with a schedule of rates as established by the recommendation of the Director and approved by City Council through resolution.

**46-606: LIMITATIONS:** Fiber Optic System Access may be supplied under a given rate schedule provided that the fiber optic system has the ability to meet the requirements of the rate schedule applicable thereto. The City shall not be obligated to construct extensions or install the additional facilities necessary to meet a Customer's needs, except as explicitly authorized by the Director.

Nothing herein shall be construed or deemed to prevent the City from negotiating separate contracts with any customer solely for the purpose of obtaining assistance in constructing or installing additional plant for the benefit of said customer. Such negotiations shall be handled by the Director and approved by City Council.

**46-607: RIGHTS OF WAY:** The City may condition providing transport or plant upon the customer's dedication or conveyance to the City of a utility easement for the installation, operation and maintenance of the City's fiber system, over, across and upon property owned or controlled by the customer or the customer's landlord. Such utility easement may also be used for the purpose of providing Access to other customers of the City. Such utility easement shall permit access thereto by authorized representatives of the City at all reasonable hours or at any time in any emergency situation. By acceptance of or submission of an application for fiber optic access, the customer shall be deemed to waive any claim for damages to the customer's property or equipment located within such utility easement, arising from the operation or maintenance of the Fiber Optic System therein. Such acceptance or application shall also be deemed to constitute a waiver of any claim for damages arising from a taking or any severance damages with respect to a customer's underlying fee, simple interest.

**46-608: LIABILITY FOR INTERRUPTIONS:** The City shall not be liable for any loss, injury or damage of any kind, including but not limited to consequential, special and punitive damages, resulting from the interruption, reduction, loss or restoration of Access from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, strike, labor slow-down, act of God, or failure or inadequacy of the Fiber Optic System. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of Access to any customer shall not be construed as or deemed to be the delivery of goods under the City Code. By acceptance of transport or plant, the customer agrees to, and shall be deemed to, waive any and all claims for damage or loss to the customer's lines, facilities, or communications equipment caused by any act or omission of the City, however, nothing herein shall be deemed or construed as a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of the City, or its

agents.

**46-609: SHUT-DOWN FOR REPAIRS:** For the purpose of making necessary repairs, upgrades or changes to its Fiber Optic System, or to avoid damage to property or to persons, the City may, without prior notice to the customer, suspend Access for such periods as may be reasonably necessary to make such repairs, upgrades or changes and the City shall not be liable for damage of any kind, direct or indirect, as a result of such discontinuance of Access.

**46-610: INTERFERENCE WITH THE FIBER OPTIC SYSTEM:** The City may refuse to supply Access where there is a possibility that the delivery of such may seriously impair or disrupt any other customers, or which may disrupt the operation of the Fiber Optic System. The City may also discontinue or disconnect Access for a Customer if the Customer, by their use of the Fiber Optic System, is seriously impairing any other Customer's use of the Fiber Optic System. The City may also, without prior notice, suspend or disconnect any customer using the Fiber Optic System for the purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or malicious purpose which has the effect of or is intended to impair or impede the operation of the Fiber Optic System, the internet, or any public or private computer or computer network connected thereto or for the purpose of obtaining illegal or unauthorized access to other computers or networks connected to the Fiber Optic System.

**46-611: PROTECTION OF THE CUSTOMER'S EQUIPMENT:** The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring on the customer side of the Demarcation Point. The customer shall install and maintain suitable protective devices and equipment to protect life and property from harm or injury and the City assumes no duty to warn or otherwise assist the customer in the selection or use of such protective devices.

**46-612: TAMPERING WITH FIBER OPTIC SYSTEM PROHIBITED:** Other than City representatives working under the supervision of the Director, no person shall connect to, adjust, tamper with or make any alteration or addition to the Fiber Optic System, without having first obtained written permission from the Director. Any person who willfully or maliciously causes damage to, interference with or obstruction to the efficient operation of the Fiber Optic System shall be guilty of a misdemeanor. Any person who causes such damage shall in addition to any criminal fines or penalties, be liable to the City for any reasonable damages which may be proximately caused by such damage or interference. Such amounts may be included upon the customer's regular monthly billing statement for utility service and upon the customer's failure or refusal to pay such charges, Fiber Optic System Access or any other public utility service provided by the City, may be terminated in accordance with the procedures set forth in this chapter.

**46-613: THEFT OF ACCESS OR USE:** It shall be unlawful for any person to make any connection to or install or construct any facility or equipment with the specific intent of obtaining Access from or making use of the Fiber Optic System, without paying for such Access or without paying the fees and charges established by the provisions set forth in this chapter.

**46-614: VIOLATIONS AND PENALTIES:** Any violation of the provisions of this chapter deemed to be a misdemeanor shall be subject to penalties prescribed for such violations under section 1-10 of this code. Any person violating the provisions of this chapter deemed to be an infraction shall be subject to the penalties as provided for in section 1-10. Violations of this chapter shall be deemed an infraction, unless such violation is designated in this chapter as a misdemeanor.

**46-616: Access to content generally**

No internet access operator shall impair, limit, or condition any broadband internet user's ability to lawfully access any and all lawful content generally available to the public on the internet.

**46-617: Access to specific types of content**

A.

No internet access operator shall impair, limit, or condition any City internet user's ability to lawfully access streaming video or audio.

B.

Internet access operators shall permit City internet users to access the public internet without being required to view proprietary content provided by the internet access operator, or any affiliate.

C.

No internet access operator shall require a City internet user to use any particular first screen or category of first screen upon accessing the internet. Rather, an internet access operator shall allow a City internet user to select any first screen of the user's choice, including a first screen of any internet service provider.

D.

Internet access operators shall comply with all applicable law and regulation regarding accessibility to users with disabilities. Except as otherwise provided under applicable law or regulation, internet access operators shall not adopt a policy of prohibiting the use of specialized end-user interfaces (such as interfaces designed for use by the disabled) by City internet users, and shall take reasonable steps to ensure that their systems as designed and installed do not impede any use of such interfaces that are readily available as of the time of such design and installation.

E.

Notwithstanding the foregoing subsections of this section, the following shall not constitute violations of this section:

1.

Reasonable technical restrictions on the bandwidth or data transmission rate available to any City internet user needed to preserve service quality and speed of internet access.

2.

Offering of different internet access products to any and all City internet users at different prices in different packages or with different capabilities.

3.

Requirement that City internet users pay their bills to the internet access operator as a condition of continued service.

4.

Otherwise lawful arrangements between the internet access operator and internet service providers.

**46-618: Support for internet protocols**

An internet access operator shall maintain currency with generally accepted standards for interoperability with internet protocol applications.

**46-619: Compliance with applicable law**

In addition to the obligations otherwise set forth in this chapter, an internet access operator shall comply with all lawful federal and state requirements with respect to access to the internet access operator's facilities for internet service providers.

**46-620:** Modification by state or federal law

If any provision of this chapter is held by a court of competent jurisdiction to be invalid or in conflict with any applicable City, state, or federal law, then this chapter shall be modified or suspended in such a manner as to implement the intent of this chapter to the fullest extent possible consistent with the requirements of any such law, rule or regulation. If this chapter cannot be modified or suspended in such a manner as to implement such intent, then this chapter shall be deemed null and void.