

## **ORDINANCE NO. 4531**

**AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA TO AMEND THE FOLLOWING SECTIONS OF THE OFFICIAL CITY CODE: SECTION 42-101 DEALING WITH PURPOSE AND INTENT; SECTION 42-102 BY ADDING CERTAIN DEFINITIONS; SECTION 42-112 DEALING WITH TECHNICAL STANDARDS, SPECIFICATIONS, AND GUIDANCE; SECTION 42-114 DEALING WITH BEST MANAGEMENT PRACTICES; AND SECTION 42-117 DEALING WITH NOTICES OF VIOLATION; TO REPEAL ANY ORDINANCES OR SECTIONS OF THE OFFICIAL CITY CODE INCONSISTENT HEREWITH; TO PROVIDE FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HASTINGS, NEBRASKA:**

**Section 1.** That Section 42-101 of the Official City Code be amended to read as follows:

**42-101. Purpose/intent.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Hastings, Nebraska through the regulation of non-storm water discharges to the storm sewer system to the maximum extent practicable as required by federal and state law. In addition, to control land disturbances, or eliminate soil erosion and sedimentation within the City of Hastings, Ne. This ordinance 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 ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system by discharges by any person.
- (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system.
- (3) To prevent non-storm water discharges generated as a result of spills, inappropriate dumping, or disposal to the City of Hastings separate storm sewer system.
- (4) To reduce pollutants in stormwater discharges from construction activity by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land.

- (5) To require the construction of locally-approved, permanent stormwater runoff controls to protect water quality and maintain non-erosive hydrologic conditions downstream of construction activity and development.
- (6) To require responsibility for and long-term maintenance of structural stormwater control facilities and nonstructural stormwater management.
- (7) To establish legal authority to carry out all inspection, surveillance, monitoring procedures, and enforcement procedures necessary to ensure compliance with this ordinance.

**Section 2.** That Section 42-102 of the Official City Code be amended to read as follows:

**42-102. Definitions.**

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

*Accidental Discharge:* A discharge prohibited by this Code which occurs by chance and without planning or thought prior occurrence.

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

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

*Builder:* Shall mean the general contractor responsible for permitting and constructing a structure and associated construction activity.

*Building Phase of Development:* Period of construction activity when a portion(s) of a common plan of development or sale requires a building permit.

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

*Common Plan of Development or Sale:* A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan which may include, but is not limited to, an announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

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

*Construction Site:* Any location where construction activity occurs.

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

*Clearing:* Any activity that removes the vegetative surface cover.

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

*Drainage Design Guidance or Manual:* Documentation that references design criteria and guidance by a community for stormwater management.

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

*Eightieth (80<sup>th</sup>) Percentile Rain Event:* A rainfall storm event equivalent to a depth of rainfall which is not exceeded in eighty (80) percent of the historic runoff producing rainfall events. The depth of rainfall to be used shall be that which is identified in the Post Construction Stormwater Management Plan (PCSWMP). The depth of rainfall is used in hydrologic calculations to determine the water quality volume or rate of discharge to be controlled for.

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

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

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

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

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

*Grading:* Excavation or fill of material, including the resulting conditions thereof.

*Hazardous Materials:* Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical,

chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

*Illegal Discharge:* Any direct or indirect non-storm water discharge to the storm drainage system except as exempted in Section 42-7 of this ordinance.

*Illicit Connections:*

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows any illegal discharge to enter the storm drainage system including, but not limited to, any conveyance which allows any non-storm water discharge including sewage, process wastewater, or wash water to enter the storm drainage system.
- (2) Any connections to the storm drainage system from indoor drains and sinks regardless of whether said drain or connection has been previously allowed, permitted, or approved by an authorized enforcement agency.
- (3) Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (4) Illicit connection will not include exception for approval. Connects allowed in 42-7.

*Industrial Activity:* Activities subject to National Pollutant Discharge Elimination System Industrial Permits as defined in 40 CFR, section 122.26 (b) (14).

*Land Development:* Any land change, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving, and any other installation of impervious cover.

*Land Disturbance Activity:* Any land development that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or right-of-way.

*MS4 Boundary:* This area is defined as the Urbanized Area map boundary prepared by the U.S. Census Bureau. This is the minimum boundary adopted by the EPA for Phase II communities as part of the MS4 program.

*Municipal Separate Storm Sewer System (MS4):* Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage ditches/channels, reservoirs, and other drainage structures.

*National Pollutant Discharge Elimination System Storm Water Discharge Permit:* A permit issued by Environmental Protection Agency (or by the State of Nebraska under authority delegated to it) that authorizes the discharge of pollutants to waters

of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*NDEQ:* Nebraska Department of Environmental Quality.

*N.O.I.:* Notice of Intent.

*N.O.T.:* Notice of Termination.

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

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

*Outfall:* The point of discharge to any watercourse from a public or private stormwater drainage system.

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

*Permittee:* The applicant in whose name a valid permit is issued.

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

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

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

*Pollution:* The presence in waters of the State of any substances, contaminants, pollutants, or manmade or man-induced impairment of waters or alteration of the chemical, physical, biological, or radiological integrity of water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

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

*Post-Construction Stormwater Management:* The management of stormwater for a period of time in perpetuity from approval for final acceptance of the construction

phase of any construction activity. The management of stormwater includes the use of Stormwater Treatment Facilities (STFs) that meet minimum site performance standards in accordance with Hastings' MS4 permit. STFs are intended to provide stormwater treatment during this time period and are considered functional after vegetation has been established.

*Post-Construction Stormwater Management Plan:* Documentation supporting analysis, design, maintenance and inspection of STFs installed on a site in order to meet minimum site performance standards in accordance with Hastings' MS4 permit.

*Post-Construction Stormwater Management Program:* Municipality controlled program that stems from requirements in the MS4 Permit. This is the guiding document behind designs for the required STFs and Post-Construction Stormwater Management Plan for each site.

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

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

*Redevelopment:* Any construction, alteration or improvement performed on a previously developed site.

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

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

*Seventieth (70<sup>th</sup>) Percentile Event:* A rainfall storm event equivalent to a depth of rainfall which is not exceeded in seventy (70) percent of the historic runoff producing rainfall events. The depth of rainfall to be used shall be that which is identified in the Post Construction Stormwater Management Plan (PCSWMP). The depth of rainfall is used in hydrologic calculations to determine the water quality volume or rate of discharge to be controlled for.

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

*Site plan:* A plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings and landscaping.

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

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

*Storm Drainage System:* Publicly-owned facilities by which storm water is collected and/or conveyed, including, but not limited to; any roads with drainage

systems; municipal streets; gutters; curbs; inlets; piped storm drains; pumping facilities; retention and detention basins; natural and human-made or altered drainage channels; reservoirs; and other drainage structures. The storm drainage system in Hastings is a municipal separate storm sewer system as defined by applicable federal regulations.

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

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

*Stormwater Treatment Facilities (STFs):* Permanent Best Management Practices (BMPs) put in place to provide control and treatment of stormwater runoff after construction for land development is complete. These facilities are physical in nature and sometimes referred to as "Structural" BMPs.

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

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

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

*Watercourse:* A natural or artificial channel through which water can flow.

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

**Section 3.** That Section 42-107 of the Official City Code be amended to read as follows:

**42-107. Discharge prohibitions.**

No person shall discharge or cause to be discharged into the municipal storm drainage system or watercourses any materials including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct or continuance of any illegal discharge to the storm drainage system is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance:

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

- (2) Discharges determined by the City to be necessary to protect public health and safety.
- (3) Dye testing if the City is notified in writing prior to the time of the test.
- (4) Any non-storm water discharge permitted under an National Pollutant Discharge Elimination System permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm sewer system.

**Section 4.** That Section 42-112 of the Official City Code be amended to read as follows:

**42-112. Technical standards, specifications, and guidance.**

All BMPs designed to meet the requirements of this Ordinance shall reference the appropriate technical standards, specifications and guidance as follows:

- (1) City of Hastings Standards and Specifications for Construction.
- (2) Nebraska Department of Roads Drainage Design and Erosion Control Standards, Specifications and Guidance.
- (3) Any other alternative methodology approved by the City of Hastings, which is demonstrated to be effective.
- (4) Timeline for Post-Construction Criteria Implementation. Implementation for the following will be after January 1, 2018:
  - (a) Proposed Redevelopment: (Applies to lands which have been platted and previously built upon). Stormwater Treatment Facilities must be accounted for on any proposed redevelopment project if it has not already submitted a complete preliminary plat or building permit for approval. Proposed redevelopment projects that are exempt from treatment are those that have already submitted a complete plat, preliminary plat or building permit for approval. Any non-exempt projects must account for a seventieth (70<sup>th</sup>) Percentile Rain Event.
  - (b) Proposed New Development: (Applies to lands which are being platted for development or have been platted but have not previously been built upon (Stormwater Treatment Facilities must be accounted for on any new proposed development project that has not already submitted a



complete preliminary plat or building permit for approval. Proposed new development projects that are exempt from treatment are those that have already submitted a complete final plat, preliminary plat or building permit for approval. Any non-exempt projects must account for an eightieth (80<sup>th</sup>) Percentile Rain Event.

**Section 5.** That Section 42-114 of the Official City Code be amended to read as follows:

**42-114. Best management practices.**

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

**Section 6.** That Section 42-117 of the Official City Code be amended to read as follows:

**42-117. Notice of violation.**

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

- (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 storm water pollution or contamination hazards and the restoration of any affected property;
  - (5) Payment of costs to cover administrative and remediation expenses;
  - (6) The implementation of source control, treatment, and prevention practices.
- If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation

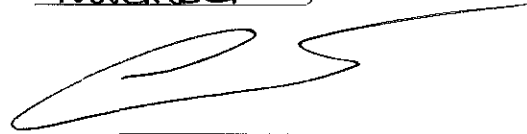
or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator and may be assessed against the real estate or collected by civil action.

- (7) Stop Work Order. Whenever the City determines that any activity is occurring which is not in compliance with the requirements of this Code, the City may order such activity stopped upon service of written notice upon the owner and/or operator responsible for or conducting such activity. Such owner and/or operator shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate owner and/or operator cannot be located, the notice to stop shall be posted in conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any owner and/or operator to fail to comply with a stop work order.

**Section 7.** That any ordinance passed and approved prior to the passage, approval and publication or posting of this ordinance, and any sections of the Official City Code in conflict with these provisions, is hereby repealed.


**Section 8.** This ordinance shall take effect and be in full force from and after its passage, approval and publication in pamphlet form, said effective date being the 13<sup>th</sup> day of December, 2017, and this ordinance shall be included in the Hastings City Code Book.

**PASSED AND APPROVED** this 27<sup>th</sup> day of November, 2017.



Mayor

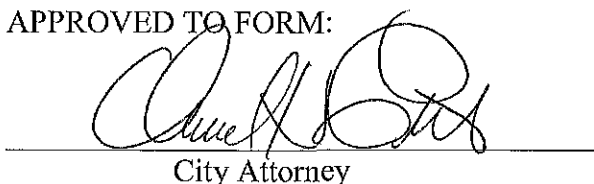
ATTEST:

  
City Clerk

(SEAL)



APPROVED TO FORM:

  
City Attorney