

The City Council of the City of Hermantown does ordain:

AN ORDINANCE AMENDING CHAPTER 10 OF THE HERMANTOWN CODE OF ORDINANCES BY ADDING SECTION 1070 THERETO

SECTION 1. Amendment to Chapter 10 of the Hermantown Code of Ordinances. Chapter 10 of the City of Hermantown Code of Ordinances is hereby amended by adding the following Sections thereto:

**SECTION 1070. ILLICIT DISCHARGE AND CONNECTION
TO THE STORM DRAINAGE SYSTEM**

1070.01 Purpose. The purpose of this Section 1070 is to provide for the health, safety, and general welfare of the citizens of the City of Hermantown through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Section 1070 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 Section 1070 are:

1070.01.01 To regulate the contribution or potential contribution of pollutants to the MS4 by any user;

1070.01.02 To prohibit illicit discharges and connections to the MS4; and,

1070.01.03 To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

1070.02 Definitions. For the purposes of this Section 1070, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

1070.02.01 “Best Management Practices or (BMPs)” are schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sewage or water disposal or drainage from raw materials storage.

1070.02.02 “Clean Water Act” is the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

1070.02.03 “Construction Activity” is any activity subject to an NPDES Construction Stormwater Permit or any activity subject to a Hermantown land alteration permit.

1070.02.04 “Greywater” is liquid waste from a residence or other establishment produced by

bathing, laundry, culinary operations and from floor drains associated with these sources, but specifically excluding toilet waste.

1070.02.05 “Hazardous Material” is 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.

1070.02.06 “Illicit Discharge” is any direct or indirect non-stormwater discharge to the MS4, except as exempted in Section 1070.07.02.

1070.02.07 “Illicit Connection” is any of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater and greywater to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain(s) or connection(s) had been previously allowed, permitted, or approved by the City of Hermantown or,

Any drain or conveyance connected from a commercial or industrial land use to the MS4 that has not been documented in plans, maps, or equivalent records and approved by the City of Hermantown.

1070.02.08 “Industrial Activities” are activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

1070.02.09 “Municipal Separate Stormwater Sewer System (MS4)” includes municipally owned facilities where 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 human-made or altered drainage channels, reservoirs, and other drainage structures.

1070.02.10 “National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” is a permit issued by the U.S. Environmental Protection Agency (or the State of Minnesota under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.

1070.02.11 “Non-Stormwater Discharge” is any discharge to the MS4 that is not composed entirely of stormwater.

1070.02.12 “Person” is any individual, association, organization, partnership, limited liability company, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

1070.02.13 “Pollutant” is anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive

fluids; non-hazardous liquid and solid wastes and 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; sediment resulting from soil erosion; and noxious or offensive matter of any kind.

1070.02.14 “Premises” is any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking areas.

1070.02.15 “Sewage” is waste and wastewater discharged from residences, business buildings, institutions, and industrial establishments.

1070.02.16 “Stormwater” is any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

1070.02.17 “Stormwater Pollution Prevention Plan or SWPPP” is a document which describes the BMPs 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 stormwater, the MS4, and/or receiving waters to the maximum extent practicable.

1070.02.18 “Wastewater” is any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

1070.02.19 “Waters of the State” means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof, as defined in Minnesota Stat. § 115.01, subd. 22.

1070.03 Applicability. This Section 1070 shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the City of Hermantown.

1070.04 Responsibility For Administration. The City of Hermantown shall administer, implement, and enforce the provisions of this Section. Any powers granted or duties imposed upon the City of Hermantown may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City.

1070.05 Severability. The provisions of this Section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Section.

1070.06 Ultimate Responsibility. The standards set forth herein and promulgated pursuant to this Section are minimum standards; therefore this Section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

1070.07 Prohibition of Illicit Discharges

1070.07.01 No person shall discharge or cause to be discharged into the MS4 anything other than stormwater, including but not limited to pollutants or waters containing any pollutants that may impede the natural flow of stormwater or the functionality of the MS4 or that cause or contribute to a violation of applicable water quality standards.

1070.07.02 The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited except as follows:

1070.07.02.01 Discharges related to water line flushing or water from 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 wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.

1070.07.02.02 Discharges specified in writing by the City of Hermantown as being necessary to protect public health and safety.

1070.07.02.03 Dye testing is an allowable discharge, but requires a verbal notification to the City of Hermantown prior to the time of the test and the dye used must be non-hazardous.

1070.07.02.04 The prohibitions contained in this Section shall not apply to any non-stormwater discharge permitted under a City permit or an NPDES permit, specific written waiver, or waste discharge order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency or the Minnesota Pollution Control 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 the discharge to the MS4.

1070.08 Prohibition of Illicit Connections

1070.08.01 The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

1070.08.02 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.

1070.08.03 A person is considered to be in violation of this Section if the person connects a line conveying sewage, process wastewater, or greywater to the MS4, or allows such a connection to continue.

1070.09 Suspension Of MS4 Access

1070.09.01 Suspension due to Illicit Discharges in Emergency Situations. The City of Hermantown may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the City of Hermantown may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

1070.09.02 Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have his/her/its access terminated if such termination would abate or reduce an illicit discharge. The City of Hermantown will notify a violator of the proposed termination of its MS4 access.

A person commits an offense if the person reinstates MS4 access to a premises terminated pursuant to this Section, without the prior approval of the City of Hermantown.

1070.10 Industrial Or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES stormwater discharge permit or City land alteration permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Hermantown prior to allowing discharges to the MS4.

1070.11 Monitoring Of Discharges

1070.11.01 Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

1070.11.02 Access to Facilities

1070.11.02.01 The City of Hermantown shall be permitted to enter and inspect facilities subject to regulation under this Section as often as may be necessary to determine compliance with this Section. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City of Hermantown.

1070.11.02.02 Facility operators shall allow the City of Hermantown 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, City land alteration permit or any permit issued by the City pursuant to this Section to discharge stormwater, and the performance of any additional duties as defined by City, state and federal law.

1070.11.02.03 The City of Hermantown shall have the right to set up, on any permitted facility, such devices as are necessary, in the opinion of the City of Hermantown, to conduct monitoring and/or sampling of the facility's stormwater discharge.

1070.11.02.04 The City of Hermantown 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 the discharger's expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

1070.11.02.05 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 of Hermantown and shall not be replaced. The costs of clearing such access shall be borne by the operator.

1070.11.02.06 Unreasonable delays in allowing the City of Hermantown access to a facility is a violation of a stormwater discharge permit and of this Section. A person who is the operator of a facility with a NPDES permit or any City land alteration permit or any permit issued by the City pursuant to this Section to discharge stormwater associated with industrial activity commits an offense if the person denies the City of Hermantown reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Section.

1070.11.02.07 If the City of Hermantown 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 Section, 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 Section or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City of Hermantown may seek issuance of a search warrant from any court of competent jurisdiction.

1070.12 Requirement to Prevent, Control, and Reduce Pollutants in Stormwater by the Use of Best Management Practices ("BMPs"). The owner or operator of a commercial or industrial establishment shall provide, at his/her/its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premises, 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 BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a SWPP as necessary for compliance with requirements of the NPDES permit.

1070.13 Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the MS4, or waters of the state said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch

services. In the event of a release of non-hazardous materials, said person shall notify the City of Hermantown in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Hermantown within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

1070.14 Enforcement

1070.14.01 Notice of Violation. Whenever the City of Hermantown finds that a person has violated a prohibition or failed to meet a requirement of this Section, the City of Hermantown may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1070.14.01.01 The performance of monitoring, analyses, and reporting;

1070.14.01.02 The elimination of illicit connections or discharges;

1070.14.01.03 That violating discharges, practices, or operations shall cease and desist;

1070.14.01.04 The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

1070.14.04.05 The implementation of source control or treatment BMPs;

1070.14.02 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 may be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

1070.14.03 Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, then representatives of the City may 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. The remedies available to the City shall include:

1070.14.03.01 Criminal prosecution;

1070.14.03.02 Injunctive relief pursuant to Section 1070.14.05 of this Section;

1070.14.03.03 Collection of administrative and remediation costs, including attorney's fees, court costs, sampling and monitoring costs, and other expenses associated with enforcement of this Section;

1070.14.03.04 Imposition of costs of abatement pursuant to Section 1070.14.04 of this Section;

1070.14.03.05 Enforcing the provisions of Section 1070.14.07 of this Section.

1070.14.04 Cost of Abatement of the Violation. After abatement of the violation, the owner of the property will be notified of the cost of abatement, including attorney's fees and administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) calendar days with the City Clerk of the City. If the amount due is not paid by the deadline set forth by the decision of the City Council, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

1070.14.05 Injunctive Relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Section. If a person has violated or continues to violate the provisions of this Section, the City of Hermantown may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

1070.14.06 Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this Section, the City of Hermantown may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

1070.14.07 Violations Deemed A Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Section is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

1070.14.08 Remedies Not Exclusive. The remedies listed in this Section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Hermantown to seek cumulative remedies.

SECTION 2. Effective Date. The provisions of this Ordinance shall be effective after adoption immediately upon publication once in the official newspaper of the City of Hermantown.

Dated: _____

Mayor

Attest:

City Clerk

Adopted: _____

Published: _____

Effective Date: _____