

ORDINANCE 1040B

AMENDING SANITARY SEWER USER REGULATIONS, INSPECTIONS, PENALTIES AND ENFORCEMENT

THE CITY COUNCIL OF THE CITY OF LAKE MILLS, JEFFERSON COUNTY, WISCONSIN,
DOES ORDAIN AS FOLLOWS:

Section 1. Section 4-7-11 of the Lake Mills Municipal Code, Enforcement; Inspections, shall be amended by repealing and recreating paragraph A and by creating paragraphs C and D as follows:

- A. **Inspection Rights:** The Director of Public Works, or authorized designee of the Director, bearing proper credentials and identification shall have the right to enter the premises of any user within the corporate limits of the City, or outside the City if served by the sanitary sewer of the City of Lake Mills, to determine whether the user is complying with all requirements of this Chapter or any wastewater discharge permit or order issued hereunder. Users shall allow the Director or authorized designee ready access to all parts of the premises for the purposes of inspection, observing, measuring, sampling, and testing, as may be required, in pursuance of the implementation and enforcement of the terms and provisions of this Chapter.
- C. **Notwithstanding paragraph A, and as a standard to be used in evaluating requests for warrants under paragraph E, any inspections of private residences or those areas of commercial or industrial properties not open to the public, shall be made only upon a showing of reasonable suspicion that the premises to be inspected is violating any provision under the sewer user ordinance.**
1. **Such inspections shall be confined to only those areas where violations of the types that are suspected are likely to be found, unless a relevant violation of the sewer user ordinance is in plain sight during any such inspection.**
 2. **Reasonable suspicion to inspect a particular, individual property may be found under the totality of the circumstances, provided a reasonable articulation of the facts and circumstances surrounding the decision to inspect is articulated by the Director or authorized designee of the Director to the owner or legal occupant of the property at the time of the inspection, and at the time of making application for an inspection warrant if consent is not given for the inspection by the owner or legal occupant of the property.**
- D. **In the case of inspections solely for the purpose of confirming that no sump pumps are unlawfully connected to the sanitary sewer, reasonable suspicion to inspect a particular property may be found if the inspector can articulate all of the following as the reasons for the inspection:**
1. **The home or other building connected to sanitary sewer has not been inspected for the presence of sump pump connections to the sanitary sewer for a period of at least three years.**

2. The home or other building is located in a area that has been specifically designated by the sewer utility supervisor as an area where it is probable that adverse events, such as sewer back-ups into basements or an overflow of sewerage, may occur during periods of high flows if unlawful discharges from sump pumps to the sanitary sewer line or lines in the designated area are allowed to occur.

3. The City Council of the City of Lake Mills has authorized inspections for unlawful sump pump connections to the sanitary sewer in the specifically designated area, and this authorization has been granted because the Council found that the designated area has a characteristic, such as lift stations or pumps, or a sewer main that has flows that are nearing capacity on high flow days, or some other similar reason that makes it probable that sewer back-ups or overflows will occur during periods of heavy rains or heavy snow melt if unlawful sump pump discharges are present in sewer lines in such designated area.

- E. If the Director or designee has been refused access to a building, structure or property, or any part thereof **that is the subject of the inspection**, the Director or designee may seek issuance of a special inspection warrant, pursuant to **Wisconsin Statutes § 66.0119** ~~Chapter 66 of the Wisconsin Statutes~~, from the Lake Mills Municipal Court if the property is located in the City of Lake Mills, or from the Jefferson County Circuit Court if the property is located in the Town of Lake Mills.
- F. **In lieu of inspection by the City of Lake Mills, in the case of inspections solely for the purpose of confirming that no sump pumps are unlawfully connected to the sanitary sewer, any property owner may elect to hire a plumber licensed in the State of Wisconsin to provide written certification, which must be submitted to the sanitary sewer utility supervisor within 15 days of election, and if such written certification states that no sump pumps are connected to the sanitary sewer, then the inspection shall be considered completed.**

Section 2. Section 4-7-12, of the Lake Mills Municipal Code, Penalties, shall be amended by repealing and recreating as follows:

4-7-12: **ADMINISTRATIVE ENFORCEMENT REMEDIES:**

- A. Notice of Noncompliance: When the Director of Public Works, or authorized designee, finds that a user has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, the Director or designee may serve upon that user a written notice of noncompliance. Within thirty (30) days of the receipt of this notice, an explanation of the violation and a plan for satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after the receipt of the notice of noncompliance. Nothing in this paragraph shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action without first issuing a notice of noncompliance.
- B. Notification of Violation: When the Director of Public Works, or authorized designee, finds that a user has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, and has failed to provide an acceptable plan for corrective action as required in paragraph A of this section, the Director or designee may serve upon that user a written notice of violation. Within thirty (30) days of the receipt of this notice, an explanation of the violation and plan for the satisfactory

correction and prevention thereof, to include specific required actions, shall be submitted by this user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action without first issuing a notice of noncompliance.

- C. Consent Orders: The Director of Public Works, or authorized designee, may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include a specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to paragraphs D and E in this section and shall be judicially enforceable.
- D. Show Cause Hearing: The Director of Public Works, or authorized designee, may order a user which has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, to appear before the Board of Public Works and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.
- E. Compliance Orders: When the Board of Public Works finds that a user has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, the Board may issue an order to the user responsible for the discharge directing that the user to come into compliance within a specified time period. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or prerequisite for, taking any other action against the user.
- F. Cease and Desist Orders: When the Director of Public works finds that a user has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:
 - 1). Immediately comply with all requirements; and
 - 2). Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

3). The issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

Section 3. Section 4-7-13 is repealed and recreated as follows:

4-7-13: **EMERGENCY SUSPENSIONS:**

A. The Director of Public Works may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which unreasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director of Public Works may also, after notice and opportunity to respond, immediately suspend a user's discharge that threatens to interfere with the operation of the Wastewater Treatment Plant, or which presents, or may present, an endangerment to the environment.

1). Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director of Public Works may take such steps as deemed necessary, including immediate suspension order. The Director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the Wastewater Treatment Plant, its receiving stream, or endangerment to individuals. The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings under this section are initiated against the user.

2). A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause hearing under section 4-7-12-D or prior to initiating termination proceedings under this section.

B. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

Section 4. Section 4-7-14 is created as follows:

4-7-14: **TERMINATION OF DISCHARGE:**

A. In addition to the provisions of section 4-7-12, any industrial or commercial user subject to pretreatment or a wastewater discharge permit who violates the following conditions is subject to discharge termination:

- 1). Violation of wastewater discharge permit conditions;
- 2). Failure to accurately report the wastewater constituents and characteristics of its discharge;
- 3). Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;

- 4). Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- 5). Violation of the pretreatment standards in sections 4-7-10-3 and 4-7-10-4 of this Chapter.

Section 5. Section 4-7-15 is created as follows:

4-7-15: **JUDICIAL ENFORCEMENT REMEDIES**

- A. Injunctive Relief. When the Public Works Director finds that a user has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, the Director may petition the Jefferson County Circuit Court through the City Attorney or Special Prosecutor for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order or other requirement imposed by this Chapter on activities of the user.
- B. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for relief shall not be a bar against, or a prerequisite for, taking any other action against the user.
- C. Civil Penalties.
 - 1). **A residential sewer user who has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, shall be liable to the City of Lake Mills for a maximum civil penalty of one thousand dollars (\$1,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation.**
 - 2). A **commercial or industrial** sewer user who has violated, or continues to violate, any provision of this Chapter, wastewater discharge permit, order issued herein, or any pretreatment standard or requirement, shall be liable to the City of Lake Mills for a maximum civil penalty of ten thousand dollars (\$10,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of violation.
 - 3). The Director may recover reasonable attorneys' fees, court costs and other expenses associated with enforcement activities including sampling and monitoring expenses and the cost of any actual damages incurred by the City of Lake Mills.
 - 4). In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation; corrective actions by the user, the compliance history of the user and any other factors as justice requires.
 - 5). Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

Section 6. Section 4-7-16 is created as follows:

4-7-16: **REMEDIES NONEXCLUSIVE:**

A. The remedies provided for in this article are not exclusive. The Director of Public Works may take any, all or any combination of these actions against a noncompliant user.

B. The Director is empowered to take more than one enforcement action against any noncompliant user.

Section 7. This ordinance was sponsored by Council Representatives Todd Temperly.

Section 8. All ordinances or parts of ordinances inconsistent with or contravening the provisions of this ordinance are hereby repealed.

Section 9. This ordinance shall be in full force and effect upon passage and publication.

Dated this _____ day of _____, 2009.

Ed Grunden, Council President

Attest:

James E. Heilman, City Clerk-Treasurer