



**CITY OF NEWPORT
COUNCIL WORKSHOP MEETING
NEWPORT CITY HALL
MARCH 6, 2014
IMMEDIATELY FOLLOWING THE REGULAR CITY COUNCIL MEETING**

MAYOR:	Tim Geraghty	City Administrator:	Deb Hill
COUNCIL:	Tom Ingemann	Supt. of Public Works:	Bruce Hanson
	Bill Sumner	Chief of Police:	Curt Montgomery
	Tracy Rahm	Fire Chief:	Mark Mailand
	Steve Gallagher	Executive Analyst:	Renee Helm

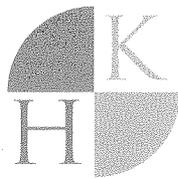
AGENDA

1. Roll call
2. Discussion Regarding Ordinance for Distressed Properties
3. Discussion Regarding Fats, Oils, and Grease Ordinance
4. Discussion Regarding MS4 Items
5. Discussion Regarding Amendments to Chapter 4, Licensing, and Chapter 7, General Regulations and Offenses
6. Close the meeting to the Public to Discuss Deb Hill's Performance Evaluation
7. Adjournment

Frederic W. Knaak*
Wayne B. Holstad**

*Also Licensed in
Wisconsin & Colorado

**Also Licensed in
Massachusetts, Iowa,
Federal Court of Claims



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MEMORANDUM

TO: CITY COUNCIL AND ADMINISTRATOR

FROM: FRITZ KNAAK, CITY ATTORNEY *FK*

RE: ORDINANCE TO DEAL WITH CHRONIC PROPERTY MAINTENANCE PROBLEMS.

At a recent workshop session, the City Council looked into a variety of options in dealing with whether and how the City should address "problem properties" in the City. These would include properties where there was a failure to do routine maintenance of the structure, as well as the surrounding lot. A handful of these properties could be viewed as "repeat customers", or individual and sites who, for whatever reason, either refused to correct cited nuisances, or corrected cited nuisances in the short term, only to have them return not long afterwards because of a failure to change the underlying behaviors that made the nuisance possible in the first place.

In the past, the community corrections officer and the police have been the principal code enforcement officers. A citation would be issued and the offender would be required to appear in court. Since these are ordinance violations, there is no overall judicial guideline for judges to follow in imposing fines. These charges are misdemeanors, meaning they would involve imposition of as much as a \$1000 fine and 90 days in jail but, typically, a person would: 1) appear at the the arraignment; 2) the judge would ask if the defendant had contacted the City and the problem was fixed; and 3) when the defendant said he didn't think there was a problem any more; 4) impose some minimum fine (say \$50) and close the case.

Some improvement to that system has occurred. Prosecutors (including yours) have indicated to the court they want no dispositions on ordinance violations without at least a review by the City attorney. This has been facilitated by a change in procedure that has the City attorney present during the arraignment calendars. Nevertheless, some of these individuals continue to get through the cracks and the court has been left with no guideline for a disposition.

We are recommending taking a unique approach that echoes the success experienced in the graduated penalties provided in areas like domestic violence, driving without insurance and driving while intoxicated statutes. We are recommending the adoption of an ordinance that makes it a separate---and identified--- offense to commit more than one nuisance during certain specified, reasonable time periods. The ordinance then calls substantial (for misdemeanor offenses) minimum penalties for repeat offenders. We belief this approach could increase the effectiveness of the criminal process and courts in enforcing the City's nuisance code.

**CITY OF NEWPORT
ORDINANCE 2014-X**

**AN ORDINANCE AMENDING THE LANGUAGE OF THE CITY CODE OF NEWPORT, MINNESOTA
TO PROVIDE FOR ADDITIONAL PENALTIES FOR CHRONIC OR REPEATED PROPERTY
NUISANCE OFFENDERS WITHIN THE CITY.**

WHEREAS, the City of Newport, Minnesota, by and acting through its City Council, finds that it is in the interest of the City of Newport to provide more effective enforcement of its City Code related to nuisances on properties within the City by expressly providing for increases in criminal penalties where properties are repeatedly found to be in violation of the City's City Code related to nuisances.

IT IS, THEREFORE, HEREBY ORDAINED:

That the Newport City Code is amended by adding a new Section 800.04 to read as follows:

“800.04. Chronic, Aggregated or Repeated Nuisance Offense.

Whenever any property owner commits more than one violation in one year or three violations four years of either Section 800.02 or Section 800.03, herein, it shall be deemed a chronic, aggregated or repeated nuisance violation and a violation of this Section.

Any person convicted of violating this section by committing a second nuisance in violation of Newport Code Section 800.02 or 800.03, within one year of a prior conviction, shall be subject to a penalty of up to 90 days in jail and no less than a \$500 fine.

Any person convicted of violating this section by committing a third nuisance in violation of Newport Code Section 800.02 or 800.03 within four years of two prior convictions shall be subject to a penalty of up to 90 days in jail and no less than an \$800 fine.”

The current City Code Sections “800.04 **Duties of City Officers**” and “800.05 **Abatement**” shall be renumbered Section 800.05 and Section 800.06 respectively.

The foregoing Ordinance was moved by Councilmember _____ and seconded by Councilmember _____.

The following Councilmembers voted in the affirmative:

The following Councilmembers voted in the negative:

Effective Date

This Ordinance becomes effective upon its passage and publication according to law.

Adopted by the City Council of the City of Newport, Minnesota on the XX day of March, 2014.

Signed: _____
Tim Geraghty, Mayor

Attest: _____
Deb Hill, City Administrator



MEMO

TO: Mayor and Council
FROM: Deb Hill, City Administrator
DATE: February 12, 2014
SUBJECT: FOG (Fats, Oils, and Grease) Ordinance

Background:

In December of 2013, Public Works was notified that a sewer line (downstream of Tinucci's restaurant) was blocked by a grease build-up which resulted in sewerage to flow into the Red Rock Saloon. Tinucci's Restaurant and the Red Rock share the same sewer line. Both establishments were asked to have their lines televised. The City Engineer reviewed the tapes and found both lines had a consistent buildup of grease.

Prior to this event, Tinucci's had their line professionally cleaned twice a year. Public Works has the 15th Street lift station (down line from Tinucci's and the Red Rock) cleaned of grease build-up every year to remove up to a four inch thick layer of grease build-up. Normally, lift stations are cleaned every other year.

The City Engineer recommended the City to require Tinucci's to install a grease trap. This was done. Staff reported that there are other areas in town that also have grease build-up problems.

Discussion:

In light of the general problem with grease build-up in our sewer lines in other areas of the City, a FOG Ordinance was researched. Having food preparation establishments remove grease before it hits the sewer lines, not only saves the city from incurring more frequent cleaning costs, but it also does not shove the problem to the sanitary district.

Recommendation:

Staff recommends that a Fats, Oils, and Grease Ordinance be enacted.

ORDINANCE NO. 2014-____

AN ORDINANCE AMENDING SECTION 1010.03 SUBP.1 OF THE CITY CODE AS IT RELATES PROHIBITED WASTE

The City Council of the City of Newport hereby ordains:

That 1010.03 Subp.1.I of the City Code is hereby deleted and moved to 1010.03 Subd.3 which is amended to read as follows:

Subd. 3 Fat, Oils and Grease Interceptor Requirements

- A. The following provisions establish standards for the reduction of fats, oils and grease by requiring proper grease interceptor design, installation, maintenance, reporting and the enforcement of penalties for failure to comply. These actions will protect the health, welfare and safety of the public and the environmental by requiring provisions for the reduction of fats, oils and grease, minimizing the impact on the Wastewater Collection and Transmission System.
- B. Definitions:
- 1) "*Customer*" means any entity which discharges wastewater to the City wastewater conveyance system.
 - 2) "*Fats, Oils and Grease*" (*FOG*) means material, either liquid or solid, composed primarily of fat, oil and grease from animal, vegetable or mineral sources.
 - 3) "*Food Service Facility*" includes the following types of establishments: Full service restaurants, fast food establishments, delicatessens, cafeterias, school cafeterias, church kitchen, hospitals and medical facilities, boarding houses, clubhouses, adult daycare facilities, assisted living facilities, convalescent homes, meat distributors and processing facilities, food processing facilities, grocery stores with food preparation/service areas, bakeries, caterers and or other similar types of operations with commercial kitchen equipment.
 - 4) "*Grease Interceptor*" or "*Interceptor*" means a device designed to capture fats, oils and grease prior to discharge to a sanitary sewer. Also termed grease traps or grease recovery devices.
 - 5) "*City*" means the City of Newport, Minnesota.
- C. Requirements: The installation or upgrade, and maintenance, of grease control equipment at both new and existing FOG generating facilities must meet the following requirements:
- 1) Grease Interceptors must be installed at all new FOG generating facilities.
 - 2) Existing FOG generating facilities must install an approved, properly operated and maintained Grease Interceptor when any of the following conditions exist:
 - (a) If the City determines the discharge of grease from the facility to the sewer has or is creating restrictions in the public sewer or is causing additional sewer maintenance

costs.

(b) Construction which requires issuance of a building permit from the City occurs at a Food Service Facility.

- 3) Grease Interceptors must be of adequate size and efficiency and at a minimum shall be sized and installed in accordance with the State of Minnesota Administrative Rules, Chapter 4715, Plumbing Code and all applicable municipal plumbing codes.
- 4) Grease Interceptors shall be installed in the waste line leading from the sinks, drains or other fixtures where grease may be introduced, and must be readily accessible for cleaning and inspection.
- 5) FOG generating facilities must maintain records for all Grease Interceptor cleaning and maintenance activities in a format approved by the City and have such records available for inspection.
- 6) FOG generating facilities that maintains a grease interceptor as required by the City of Newport must clean said interceptor at a minimum on a monthly basis. If the owner of a FOG generating facilities in which an interceptor is installed and or required can demonstrate to the reasonable satisfaction of the City Council or a designated representative that cleaning does not need to be monthly, the Council or its designated person may grant an exception allowing such owner to clean less frequently, but not less than on a quarterly basis.

Comment [JH1]: Added for discussion

(a) Each facility must maintain records of the dates and means of disposal.

(b) Any removal and hauling of the captured materials not performed by the owner's personnel must be performed in compliance with all applicable laws and regulations by a licensed waste disposal contractor.

- 7) Variance. The City may grant a variance or conditional waiver from the minimum requirements in Section C if the FOG generating facility demonstrates to the satisfaction of the City that any FOG discharge is negligible and will have an insignificant impact on the sewer system. At a minimum, the following conditions apply:

(a) The FOG generating facility must demonstrate that the discharge from its activities contains less than 100 mg/1 of FOG.

(b) The sampling and testing to demonstrate the concentration of grease in the discharge must be conducted, at the facilities expense, by an independent testing organization in accordance with acceptable industry standards

Comment [JH2]: Council to consider variance process.

- 8) The City will perform periodic and random FOG equipment inspections, including scheduled inspections of known problem areas. Records of the inspections shall be maintained by the City. An authorized agent of the City or employee of the City may at all reasonable hours, enter any private premises for the purpose of inspecting sewer system connections, plumbing, Grease Interceptors and appurtenances to assure compliance with this or other applicable laws, regulations and ordinances.

D. Penalties and Charges for remedial maintenance or repair of sanitary sewer system.

- 1) Any person found in violation of any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by penalty established in Minnesota law for a misdemeanor as may be amended from time to time. Any person convicted of a violation of this ordinance shall be required to pay the reasonable costs of prosecution.
- 2) The City may in its discretion, seek any civil remedies available to it including remedies at law, in equity or other relief. In the event that civil remedy is pursued, the City may seek reimbursement of any and all costs, disbursements, witness or other fees, as well as reasonable attorney's fees expended by the City in order to enforce this Ordinance.
- 3) Other Remedies.
 - (a) Each right or remedy accruing to the City under this Ordinance or at law is separate and distinct and may, at the City's discretion, be exercised independently or simultaneously with any other right or remedy.
 - (b) The City may disconnect water and sewer service to the establishment and to the structure in which the grease trap is located.
 - (c) The City may impose a fine of not more than \$1,000 per month until such owner demonstrates that they are in compliance with the requirements of this Ordinance.
 - (d) For failure to maintain records as required by this Ordinance, or failing or refusing to timely comply with any request for records required to be provided to the Council or its designated representative, a fine of up to \$250.00 per day until such records are provided.
- 4) In the event that the owner is found to have contributed to the partial or complete obstruction of the sewer system resulting from the discharge of waste containing grease and that the City is required to act immediately to control a public health hazard because of such blockage, such owner shall be required to reimburse the City for all costs of abating such condition. In situations where there are multiple owners identified as contributing to the obstruction, the City will apportion the cost of the clean-up, maintenance or repair costs on a prorated basis, based on each owner's percentage share of the average total sanitary sewer charges for all such owners. Further should inspection, testing or other sampling activity by the City or its representative confirm that any user is contributing excessive grease (including other harmful ingredients) and is causing the repair or extraordinary maintenance activity to maintain the sanitary sewer system the City Council may require further remedial actions necessary to correct the problem.

Comment [JH3]: Added for discussion

Comment [JH4]: Added for discussion

MS4 Permit Update Outline

PART II. DESCRIPTION OF REGULATORY MECHANISMS

1. New ordinance required for Illicit Discharge. (sub paragraph A2; page 3 of 16)

- 1) *Sample provided.*

2. Ordinance update required for Construction Site Stormwater Runoff Control (sub paragraph B; page 4 of 16). See suggested language below:

- 1) *Where ten (10) or more acres of disturbed soil drain to a common location, the Permittee(s) must provide a temporary sediment basin to provide treatment to the runoff before it leaves the construction site or enters surface waters. A temporary sediment basin may be converted to a permanent basin after construction is complete. The temporary basin is no longer required when permanent cover has reduced the acreage of disturbed soil to less than ten (10) acres draining to a common location.*

Another option is to simply "reference" the Construction General Permit in the regulatory mechanism.

3. Ordinance update required to include Construction General Permit – Site Inspections and Records of Rainfall Events (sub paragraph C4; page 4 of 16). See suggested language below:

- 1) *The Permittee(s) must ensure that a trained person (as identified in Part III.A.3.a.) will routinely inspect the entire construction site at least once every seven (7) days during active construction and within 24 hours after a rainfall event greater than 0.5 inches in 24 hours. Following an inspection that occurs within 24 hours after a rainfall event, the next inspection must be conducted within seven (7) days after the rainfall event.*

- 2) *All inspections and maintenance conducted during construction must be recorded within 24 hours in writing and these records must be retained with the SWPPP in accordance with Part III.E. Records of each inspection and maintenance activity shall include:*

- a) *Date and time of inspections*

- b) *Name of person(s) conducting inspections*

- c) *Findings of inspections, including the specific location where corrective actions are needed.*

- d) *Corrective actions taken (including dates, times, and party completing maintenance activities)*

- e) *Date and amount of all rainfall events greater than 1/2 inch (0.5 inches) in 24 hours. Rainfall amounts must be obtained by a properly maintained rain gauge installed onsite, a weather station that is within 1 mile of your location or a weather reporting system that provides site specific rainfall data from radar summaries.*

- f) *If any discharge is observed to be occurring during the inspection, a record of all points of the property from which there is a discharge must be made, and the discharge should*

MS4 Permit Update Outline

be described (i.e., color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of pollutants) and photographed.

- g) *Any amendments to the SWPPP proposed as a result of the inspection must be documented as required in Part III.B. within seven (7) calendar days.*
4. Ordinance update required to include Total Suspended Solids (TSS) and Total Phosphorous (TP) Limits (sub paragraph B2a and B2b; page 5 of 16). See suggested language below:
- 1) *For new development projects – no net increase from pre-project conditions (on an annual average basis) of:*
 - a) *Stormwater discharge volume, unless precluded by the stormwater management limitations in the Permit (Part III.D.5.a(3)(a)).*
 - b) *Stormwater discharges of Total Suspended Solids (TSS).*
 - c) *Stormwater discharges of Total Phosphorus (TP).*
 - 2) *For redevelopment projects – a net reduction from pre-project conditions (on an annual average basis) of:*
 - a) *Stormwater discharge volume, unless precluded by the stormwater management limitations in the Permit (Part III.D.5.a(3)(a)).*
 - b) *Stormwater discharges of TSS.*
 - c) *Stormwater discharges of TP.*

PART III. ENFORCEMENT RESPONSE PROCEDURES (ERPs)

- 1) *These enforcement procedures will be addressed in previous Illicit Discharge ordinance.*

PART IV. STORM SEWER SYSTEM MAP AND INVENTORY

- 1) *The City map currently displays pipes only 15 inches or greater in diameter, with a large majority of 12 inch pipes added as well. Starting in in the Spring 2014 , the Public Works Department must continue to map all pipeline locations that are 12 inches and greater in diameter (with the assistance of MSA if needed). Map must include ID numbers for all receiving waters.*

PART V. MINIMUM CONTROL MEASURES (MCMs)

- 1) *The MCMs have been updated to the new permit requirements in the MCM Binder. Individual MCMs will require different timelines for completion within the 12 months of the date the permit coverage is extended or on an annual basis.*



Minnesota Pollution Control Agency

520 Lafayette Road North
St. Paul, MN 55155-4194

MS4 SWPPP Application for Reauthorization

for the NPDES/SDS General Small Municipal Separate Storm Sewer System (MS4) Permit MNR040000 reissued with an effective date of August 1, 2013
Stormwater Pollution Prevention Program (SWPPP) Document

Doc Type: Permit Application

Instructions: This application is for authorization to discharge stormwater associated with Municipal Separate Storm Sewer Systems (MS4s) under the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Permit Program. **No fee** is required with the submittal of this application. Please refer to "Example" for detailed instructions found on the Minnesota Pollution Control Agency (MPCA) MS4 website at <http://www.pca.state.mn.us/ms4>.

Submittal: This MS4 SWPPP Application for Reauthorization form must be submitted electronically via e-mail to the MPCA at ms4permitprogram.pca@state.mn.us from the person that is duly authorized to certify this form. All questions with an asterisk (*) are required fields. All applications will be returned if required fields are not completed.

Questions: Contact Claudia Hochstein at 651-757-2881 or claudia.hochstein@state.mn.us, Dan Miller at 651-757-2246 or daniel.miller@state.mn.us, or call toll-free at 800-657-3864.

General Contact Information (*Required fields)

MS4 Owner (with ownership or operational responsibility, or control of the MS4)

*MS4 permittee name: City of Newport *County: Washington
(city, county, municipality, government agency or other entity)
*Mailing address: 596 7th Avenue
*City: Newport *State: MN *Zip code: 55055-1345
*Phone (including area code): (651) 459-5677 *E-mail: dhill@newportmn.com

MS4 General contact (with Stormwater Pollution Prevention Program [SWPPP] implementation responsibility)

*Last name: Hanson *First name: Bruce
(department head, MS4 coordinator, consultant, etc.)
*Title: Public Works Superintendant
*Mailing address: 596 7th Avenue
*City: Newport *State: MN *Zip code: 55055-1345
*Phone (including area code): (651) 459-2475 *E-mail: brhanson@mninter.net

Preparer information (complete if SWPPP application is prepared by a party other than MS4 General contact)

Last name: Burns First name: Kevin
(department head, MS4 coordinator, consultant, etc.)
Title: Consultant
Mailing address: 60 Plato Blvd East
City: St. Paul State: MN Zip code: 55107
Phone (including area code): (612) 548-3144 C# (651) 271-6584 E-mail: kburns@msa-ps.com

Verification

1. I seek to continue discharging stormwater associated with a small MS4 after the effective date of this Permit, and shall submit this MS4 SWPPP Application for Reauthorization form, in accordance with the schedule in Appendix A, Table 1, with the SWPPP document completed in accordance with the Permit (Part II.D.). Yes
2. I have read and understand the NPDES/SDS MS4 General Permit and certify that we intend to comply with all requirements of the Permit. Yes

Certification (All fields are required)

- Yes - I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.

I certify that based on my inquiry of the person, or persons, who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of civil and criminal penalties.

This certification is required by Minn. Stat. §§ 7001.0070 and 7001.0540. The authorized person with overall, MS4 legal responsibility must certify the application (principal executive officer or a ranking elected official).

By typing my name in the following box, I certify the above statements to be true and correct, to the best of my knowledge, and that this information can be used for the purpose of processing my application.

Name: Timothy M Geraghty
(This document has been electronically signed)

Title: Mayor Tim Geraghty Date (mm/dd/yyyy): 12/23/13

Mailing address: 596 7th Avenue

City: Newport State: MN Zip code: 55055-1345

Phone (including area code): (651) 459-6790 E-mail: timghty@gmail.com

Note: The application will not be processed without certification.

Stormwater Pollution Prevention Program Document

I. Partnerships: (Part II.D.1)

- A. List the **regulated small MS4(s)** with which you have established a partnership in order to satisfy one or more requirements of this Permit. Indicate which Minimum Control Measure (MCM) requirements or other program components that each partnership helps to accomplish (List all that apply). Check the box below if you currently have no established partnerships with other regulated MS4s. If you have more than five partnerships, hit the tab key after the last line to generate a new row.

No partnerships with regulated small MS4s

Name and description of partnership	MCM/Other permit requirements involved
South Washington Watershed District	MCM 1, Public Education and Outreach

- B. If you have additional information that you would like to communicate about your partnerships with other regulated small MS4(s), provide it in the space below, or include an attachment to the SWPPP Document, with the following file naming convention: *MS4NameHere_Partnerships*.

<http://www.swwdmn.org/>

II. Description of Regulatory Mechanisms: (Part II.D.2)

Illicit discharges

- A. Do you have a regulatory mechanism(s) that effectively prohibits non-stormwater discharges into your small MS4, except those non-stormwater discharges authorized under the Permit (Part III.D.3.b.)? Yes No

1. If **yes**:

- a. Check which *type* of regulatory mechanism(s) your organization has (check all that apply):

- Ordinance Contract language
 Policy/Standards Permits
 Rules
 Other, explain: _____

- b. Provide either a direct link to the mechanism selected above or attach it as an electronic document to this form; or if your regulatory mechanism is either an Ordinance or a Rule, you may provide a citation:

Citation:

Direct link:

http://www.ci.newport.mn.us/documents/Section1371StormWaterManagement_001.pdf

Check here if attaching an electronic copy of your regulatory mechanism, with the following file naming convention: *MS4NameHere_IDDEreg*.

2. If **no**:

Describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, this permit requirement is met:

The City code does not have a citation that meets the requirements of an effective regulatory mechanism. The City staff is currently reviewing the requirements and will adopt an illicit discharge ordinance to meet the permit requirements within 12 months of the date the permit coverage is extended.

Construction site stormwater runoff control

A. Do you have a regulatory mechanism(s) that establishes requirements for erosion and sediment controls and waste controls? Yes No

1. If yes:

a. Check which type of regulatory mechanism(s) your organization has (check all that apply):

- Ordinance Contract language
- Policy/Standards Permits
- Rules
- Other, explain: _____

b. Provide either a direct link to the mechanism selected above or attach it as an electronic document to this form; or if your regulatory mechanism is either an Ordinance or a Rule, you may provide a citation:

Citation:

Ch 1371.08 Subd. 2, 3, 6

Direct link:

http://www.ci.newport.mn.us/documents/Section1371StormWaterManagement_001.pdf

Check here if attaching an electronic copy of your regulatory mechanism, with the following file naming convention: *MS4NameHere_CSWreg.*

B. Is your regulatory mechanism at least as stringent as the MPCA general permit to Discharge Stormwater Associated with Construction Activity (as of the effective date of the MS4 Permit)? Yes No

If you answered **yes** to the above question, proceed to C.

If you answered **no** to either of the above permit requirements listed in A. or B., describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met:

The City staff is having a series of work-shops starting 2/13/14 for new/ammending city ordinances and will adopt a Construction Site Stormwater Runoff Control ordinance to meet the permit requirements within 12 months of the date the permit coverage is extended.

C. Answer **yes** or **no** to indicate whether your regulatory mechanism(s) requires owners and operators of construction activity to develop site plans that incorporate the following erosion and sediment controls and waste controls as described in the Permit (Part III.D.4.a.(1)-(8)), and as listed below:

- 1. Best Management Practices (BMPs) to minimize erosion. Yes No
- 2. BMPs to minimize the discharge of sediment and other pollutants. Yes No
- 3. BMPs for dewatering activities. Yes No
- 4. Site inspections and records of rainfall events Yes No
- 5. BMP maintenance Yes No
- 6. Management of solid and hazardous wastes on each project site. Yes No
- 7. Final stabilization upon the completion of construction activity, including the use of perennial vegetative cover on all exposed soils or other equivalent means. Yes No
- 8. Criteria for the use of temporary sediment basins. Yes No

If you answered **no** to any of the above permit requirements, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met:

C.4 The City will ammend the ordinance to include CGP #4 (Part IV.E) Site Inspections and Records of Rainfall Events within 12 months of the date the permit coverage is extended.

Post-construction stormwater management

A. Do you have a regulatory mechanism(s) to address post-construction stormwater management activities? Yes No

1. If yes:

a. Check which type of regulatory mechanism(s) your organization has (check all that apply):

- Ordinance Contract language
- Policy/Standards Permits

Rules

Other, explain: _____

- b. Provide either a direct link to the mechanism selected above or attach it as an electronic document to this form; or if your regulatory mechanism is either an Ordinance or a Rule, you may provide a citation:

Citation:

Ch 1371.08 Subd. 7

Direct link:

http://www.ci.newport.mn.us/documents/Section1371StormWaterManagement_001.pdf

Check here if attaching an electronic copy of your regulatory mechanism, with the following file naming convention: *MS4NameHere_PostCSWreg*.

- B. Answer **yes** or **no** below to indicate whether you have a regulatory mechanism(s) in place that meets the following requirements as described in the Permit (Part III.D.5.a.):

1. **Site plan review:** Requirements that owners and/or operators of construction activity submit site plans with post-construction stormwater management BMPs to the permittee for review and approval, prior to start of construction activity. Yes No
2. **Conditions for post construction stormwater management:** Requires the use of any combination of BMPs, with highest preference given to Green Infrastructure techniques and practices (e.g., infiltration, evapotranspiration, reuse/harvesting, conservation design, urban forestry, green roofs, etc.), necessary to meet the following conditions on the site of a construction activity to the Maximum Extent Practicable (MEP):
 - a. For new development projects – no net increase from pre-project conditions (on an annual average basis) of: Yes No
 - 1) Stormwater discharge volume, unless precluded by the stormwater management limitations in the Permit (Part III.D.5.a(3)(a)).
 - 2) Stormwater discharges of Total Suspended Solids (TSS).
 - 3) Stormwater discharges of Total Phosphorus (TP).
 - b. For redevelopment projects – a net reduction from pre-project conditions (on an annual average basis) of: Yes No
 - 1) Stormwater discharge volume, unless precluded by the stormwater management limitations in the Permit (Part III.D.5.a(3)(a)).
 - 2) Stormwater discharges of TSS.
 - 3) Stormwater discharges of TP.
3. **Stormwater management limitations and exceptions:**
 - a. Limitations
 - 1) Prohibit the use of infiltration techniques to achieve the conditions for post-construction stormwater management in the Permit (Part III.D.5.a(2)) when the infiltration structural stormwater BMP will receive discharges from, or be constructed in areas: Yes No
 - a) Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit issued by the MPCA.
 - b) Where vehicle fueling and maintenance occur.
 - c) With less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock.
 - d) Where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater.
 - 2) Restrict the use of infiltration techniques to achieve the conditions for post-construction stormwater management in the Permit (Part III.D.5.a(2)), without higher engineering review, sufficient to provide a functioning treatment system and prevent adverse impacts to groundwater, when the infiltration device will be constructed in areas: Yes No
 - a) With predominately Hydrologic Soil Group D (clay) soils.
 - b) Within 1,000 feet up-gradient, or 100 feet down-gradient of active karst features.
 - c) Within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. R. 4720.5100, subp. 13.
 - d) Where soil infiltration rates are more than 8.3 inches per hour.
 - 3) For linear projects where the lack of right-of-way precludes the installation of volume control practices that meet the conditions for post-construction stormwater management in the Permit (Part III.D.5.a(2)), the permittee's regulatory mechanism(s) may allow exceptions as described in the Permit (Part III.D.5.a(3)(b)). The permittee's regulatory Yes No

mechanism(s) shall ensure that a reasonable attempt be made to obtain right-of-way during the project planning process.

4. **Mitigation provisions:** The permittee's regulatory mechanism(s) shall ensure that any stormwater discharges of TSS and/or TP not addressed on the site of the original construction activity are addressed through mitigation and, at a minimum, shall ensure the following requirements are met:
- a. Mitigation project areas are selected in the following order of preference: Yes No
 - 1) Locations that yield benefits to the same receiving water that receives runoff from the original construction activity.
 - 2) Locations within the same Minnesota Department of Natural Resource (DNR) catchment area as the original construction activity.
 - 3) Locations in the next adjacent DNR catchment area up-stream
 - 4) Locations anywhere within the permittee's jurisdiction.
 - b. Mitigation projects must involve the creation of new structural stormwater BMPs or the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP. Yes No
 - c. Routine maintenance of structural stormwater BMPs already required by this permit cannot be used to meet mitigation requirements of this part. Yes No
 - d. Mitigation projects shall be completed within 24 months after the start of the original construction activity. Yes No
 - e. The permittee shall determine, and document, who will be responsible for long-term maintenance on all mitigation projects of this part. Yes No
 - f. If the permittee receives payment from the owner and/or operator of a construction activity for mitigation purposes in lieu of the owner or operator of that construction activity meeting the conditions for post-construction stormwater management in Part III.D.5.a(2), the permittee shall apply any such payment received to a public stormwater project, and all projects must be in compliance with Part III.D.5.a(4)(a)-(e). Yes No
5. **Long-term maintenance of structural stormwater BMPs:** The permittee's regulatory mechanism(s) shall provide for the establishment of legal mechanisms between the permittee and owners or operators responsible for the long-term maintenance of structural stormwater BMPs not owned or operated by the permittee, that have been implemented to meet the conditions for post-construction stormwater management in the Permit (Part III.D.5.a(2)). This only includes structural stormwater BMPs constructed after the effective date of this permit and that are directly connected to the permittee's MS4, and that are in the permittee's jurisdiction. The legal mechanism shall include provisions that, at a minimum:
- a. Allow the permittee to conduct inspections of structural stormwater BMPs not owned or operated by the permittee, perform necessary maintenance, and assess costs for those structural stormwater BMPs when the permittee determines that the owner and/or operator of that structural stormwater BMP has not conducted maintenance. Yes No
 - b. Include conditions that are designed to preserve the permittee's right to ensure maintenance responsibility, for structural stormwater BMPs not owned or operated by the permittee, when those responsibilities are legally transferred to another party. Yes No
 - c. Include conditions that are designed to protect/preserve structural stormwater BMPs and site features that are implemented to comply with the Permit (Part III.D.5.a(2)). If site configurations or structural stormwater BMPs change, causing decreased structural stormwater BMP effectiveness, new or improved structural stormwater BMPs must be implemented to ensure the conditions for post-construction stormwater management in the Permit (Part III.D.5.a(2)) continue to be met. Yes No

If you answered **no** to any of the above permit requirements, describe the tasks and corresponding schedules that will be taken to assure that, within twelve (12) months of the date permit coverage is extended, these permit requirements are met:

B.2.a., B.2.b.; The city has a total volume control ordinance in-place with no limits on Total Suspended Solids (TSS) or Total Phosphorus (TP). The city review its current post-construction stormwater ordinance design standards during its up-coming work shops starting on 2/13/14. The city engineer will look for guidance on how to craft an effective ordinance for TSS and TP that will benefit the community. The city will modify its design standards with in 12 months of the date the permit coverage is extended.

III. Enforcement Response Procedures (ERPs): (Part II.D.3)

- A. Do you have existing ERPs that satisfy the requirements of the Permit (Part III.B.)? Yes No

1. If **yes**, attach them to this form as an electronic document, with the following file naming convention: *MS4NameHere_ERPs*.
2. If **no**, describe the tasks and corresponding schedules that will be taken to assure that, with twelve (12) months of the date permit coverage is extended, these permit requirements are met:

They City does not have written Enforcement Repsonse Procedures (ERPs) that meet the requirements of the MCM's per say. Thru the partnership with SWWD the ordinance will need to be modified to incorporate SWWD's ERP's. The city staff will look into adding ERPs during its work shops in 2014. The ordinance will be completed within 12 months of the date the permit coverage is extended.

B. Describe your ERPs:

IV. Storm Sewer System Map and Inventory: (Part II.D.4.)

A. Describe how you manage your storm sewer system map and inventory:

City CADD and Record Drawings along with the SWWD MS4 partnership.

B. Answer **yes** or **no** to indicate whether your storm sewer system map addresses the following requirements from the Permit (Part III.C.1.a-d), as listed below:

1. The permittee's entire small MS4 as a goal, but at a minimum, all pipes 12 inches or greater in diameter, including stormwater flow direction in those pipes. Yes No
2. Outfalls, including a unique identification (ID) number assigned by the permittee, and an associated geographic coordinate. Yes No
3. Structural stormwater BMPs that are part of the permittee's small MS4. Yes No
4. All receiving waters. Yes No

If you answered **no** to any of the above permit requirements, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met:

B.1. The City map currently displays pipes only 15 inches or greater in diameter, with a large majority of 12 inch pipes added as well. Starting in in the Spring 2014 , the Public Works Department will continue working with the city engineer to map all pipeline locations that are 12 inches and greater in diameter. We will use a GPS to field mark all additional pipeline needed to be added, and then integrate them into the map. The work will be completed within 12 months of the date the permit coverage is extended.

B.4 Map does not have ID numbers for all recieving waters. Will have to review our map and inventory to add more information on the receiving waters. The work will be completed within 12 months of the date the permit coverage is extended.

C. Answer **yes** or **no** to indicate whether you have completed the requirements of 2009 Minnesota Session Law, Ch. 172. Sec. 28: with the following inventories, according to the specifications of the Permit (Part III.C.2.a.-b.), including:

1. All ponds within the permittee's jurisdiction that are constructed and operated for purposes of water quality treatment, stormwater detention, and flood control, and that are used for the collection of stormwater via constructed conveyances. Yes No
2. All wetlands and lakes, within the permittee's jurisdiction, that collect stormwater via constructed conveyances. Yes No

D. Answer **yes** or **no** to indicate whether you have completed the following information for each feature inventoried.

1. A unique identification (ID) number assigned by the permittee. Yes No
2. A geographic coordinate. Yes No
3. Type of feature (e.g., pond, wetland, or lake). This may be determined by using best professional judgment. Yes No

If you have answered **yes** to all above requirements, and you have already submitted the Pond Inventory Form to the MPCA, then you do not need to resubmit the inventory form below.

If you answered **no** to any of the above permit requirements, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met:

E. Answer **yes** or **no** to indicate if you are attaching your pond, wetland and lake inventory to the MPCA Yes No

on the form provided on the MPCA website at: <http://www.pca.state.mn.us/ms4> , according to the specifications of Permit (Part III.C.2.b.(1)-(3)). Attach with the following file naming convention: *MS4NameHere_inventory*.

If you answered **no**, the inventory form must be submitted to the MPCA MS4 Permit Program within 12 months of the date permit coverage is extended.

V. Minimum Control Measures (MCMs) (Part II.D.5)

A. MCM1: Public education and outreach

1. The Permit requires that, within 12 months of the date permit coverage is extended, existing permittees revise their education and outreach program that focuses on illicit discharge recognition and reporting, as well as other specifically selected stormwater-related issue(s) of high priority to the permittee during this permit term. Describe your **current** educational program, including **any high-priority topics included**:

Thru the means of cable television broadcasts, city web-site stormwater page, quarterly newsletter and annual meeting, the importance of raking grass clippings, leaves off streets, automobile tune-ups, pesticides, fertilizers use and disposal and proper disposal of pet waste are emphasized to ensure safe and cleaner stormwater discharge.

2. List the categories of BMPs that address your public education and outreach program, including the distribution of educational materials and a program implementation plan. Use the first table for categories of BMPs that you have established and the second table for categories of BMPs that you plan to implement over the course of the permit term.

Include the measurable goals with appropriate timeframes that each BMP category will be implemented and completed. In addition, provide interim milestones and the frequency of action in which the permittee will implement and/or maintain the BMPs. Refer to the U.S. Environmental Protection Agency's (EPA) *Measurable Goals Guidance for Phase II Small MS4s* (<http://www.epa.gov/npdes/pubs/measurablegoals.pdf>).

If you have more than five categories, hit the tab key after the last line to generate a new row.

Established BMP categories	Measurable goals and timeframes
Cable Television Broadcast Channel 16	Continue to throughout the permit, publish stormwater related issues; number of stormwater related segments aired
Quarterly Newsletter	Continue to publish stormwater related articles, number of stormwater related articles. (quarterly)
City Website Stormwater Information	Continue to: publish issues and determine material to include in website; active stormwater information on website; number of articles on city website; number of website "hits" from counter (quarterly)
Stormwater Related Brochures	Continue to cooperate with neighbor MS4's ; contact neighbor MS4's to discuss cooperative agreement between MS4's; number of Brochures distributed (annual)
Follow applicable public notice requirements	Provide notice of public informational meeting at least 30 days prior; on an annual interval; completed public notice (annual)
BMP categories to be implemented	Measurable goals and timeframes
Educating the public on illicit discharge recognition and reporting to the City of Newport MS4 as required in Part III.D.1.a.(2) of the MS4 General Permit	Within 12 months of the date the permit coverage is extended.

3. Provide the name or the position title of the individual(s) who is responsible for implementing and/or coordinating this MCM:

Bruce Hanson, Superintendent, Public Works

B. MCM2: Public participation and involvement

1. The Permit (Part III.D.2.a.) requires that, within 12 months of the date permit coverage is extended, existing permittees shall revise their current program, as necessary, and continue to implement a public participation/involvement program to solicit public input on the SWPPP. Describe your current program:

Annual SWPPP meeting with input and comments allowed from the public.

Publish the legal advertisement in the local paper and cities website as required.

- List the categories of BMPs that address your public participation/involvement program, including solicitation and documentation of public input on the SWPPP. Use the first table for categories of BMPs that you have established and the second table for categories of BMPs that you plan to implement over the course of the permit term.

Include the measurable goals with appropriate timeframes that each BMP category will be implemented and completed. In addition, provide interim milestones and the frequency of action in which the permittee will implement and/or maintain the BMPs. Refer to the EPA's *Measurable Goals Guidance for Phase II Small MS4s* (<http://www.epa.gov/npdes/pubs/measurablegoals.pdf>). **If you have more than five categories**, hit the tab key after the last line to generate a new row.

Established BMP categories	Measurable goals and timeframes
Annual Public Meeting	Annual meeting in each year of the Permit cycle; number of complaints on stormwater quality; completed public meetings; attendance at public meeting (ongoing – annual)
Household Cleanup Day	Year 3 Evaluate program; complete recycle days each year; evaluate existing program; number of participants (ongoing – annual)
Volunteer Storm Drain Stenciling and Program	Year 3 develop a standard program; Year 4 the City will purchase the materials and equipment for stenciling and distribute information to the public to become aware of the program; Year 3 to 5 promote groups to volunteer to stencil storm drains; number of storm drains stenciled; establish a volunteer storm drain stenciling program; number of volunteers participating in the program each year the program is in place. (ongoing – annual)
BMP categories to be implemented	Measurable goals and timeframes

- Do you have a process for receiving and documenting citizen input? Yes No

If you answered **no** to the above permit requirement, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, this permit requirement is met:

- Provide the name or the position title of the individual(s) who is responsible for implementing and/or coordinating this MCM:

Bruce Hanson, Superintendent, Public Works

C. MCM 3: Illicit discharge detection and elimination

- The Permit (Part III.D.3.) requires that, within 12 months of the date permit coverage is extended, existing permittees revise their current program as necessary, and continue to implement and enforce a program to detect and eliminate illicit discharges into the small MS4. Describe your current program:

At the present time, the city is in an MS4 partnership with SWWD, it does have an explicit ordinance that prohibits illicit discharges and connections. The public works staff are trained to look for any signs of an illicit discharge / connections while on the job.

- Does your Illicit Discharge Detection and Elimination Program meet the following requirements, as found in the Permit (Part III.D.3.c.-g.)?

- Incorporation of illicit discharge detection into all inspection and maintenance activities conducted under the Permit (Part III.D.6.e.-f.) Where feasible, illicit discharge inspections shall be conducted during dry-weather conditions (e.g., periods of 72 or more hours of no precipitation). Yes No
- Detecting and tracking the source of illicit discharges using visual inspections. The permittee may Yes No

also include use of mobile cameras, collecting and analyzing water samples, and/or other detailed procedures that may be effective investigative tools.

- c. Training of all field staff, in accordance with the requirements of the Permit (Part III.D.6.g.(2)), in illicit discharge recognition (including conditions which could cause illicit discharges), and reporting illicit discharges for further investigation. Yes No
- d. Identification of priority areas likely to have illicit discharges, including at a minimum, evaluating land use associated with business/industrial activities, areas where illicit discharges have been identified in the past, and areas with storage of large quantities of significant materials that could result in an illicit discharge. Yes No
- e. Procedures for the timely response to known, suspected, and reported illicit discharges. Yes No
- f. Procedures for investigating, locating, and eliminating the source of illicit discharges. Yes No
- g. Procedures for responding to spills, including emergency response procedures to prevent spills from entering the small MS4. The procedures shall also include the immediate notification of the Minnesota Department of Public Safety Duty Officer, if the source of the illicit discharge is a spill or leak as defined in Minn. Stat. § 115.061. Yes No
- h. When the source of the illicit discharge is found, the permittee shall use the ERPs required by the Permit (Part III.B.) to eliminate the illicit discharge and require any needed corrective action(s). Yes No

If you answered **no** to any of the above permit requirements, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met:

3. List the categories of BMPs that address your illicit discharge, detection and elimination program. Use the first table for categories of BMPs that you have established and the second table for categories of BMPs that you plan to implement over the course of the permit term.

Include the measurable goals with appropriate timeframes that each BMP category will be implemented and completed. In addition, provide interim milestones and the frequency of action in which the permittee will implement and/or maintain the BMPs. Refer to the EPA's *Measurable Goals Guidance for Phase II Small MS4s* (<http://www.epa.gov/npdes/pubs/measurablegoals.pdf>).

If you have more than five categories, hit the tab key after the last line to generate a new row.

Established BMP categories	Measurable goals and timeframes
Illicit discharge ordinance	Continue to: review existing ordinance and compare with other communities; Completed illicit discharge, detection, and elimination ordinance within 12 months after the permit coverage is extended and annually for the permit term.
Storm Sewer Map	Examine existing system data; compile existing data; complete the storm sewer map; show all pipes, at a minimum 12" and larger; show outfalls, within 12 months after the permit coverage is extended and annually for the permit term.
Septic System Ordinance	Review existing ordinance and compare with others; Complete illicit discharge, detection, and elimination ordinance; within 12 months after the permit coverage is extended and annually for the permit term.
Recreational Sewage Control	Determine locations for proper recreational disposal; number of illicit recreational sewer discharges; publish disposal locations within 12 months after the permit coverage is extended and annually for the permit term.
Illicit Discharge Inspection Program	Gather existing information: on illicit connection tests performed to date within the City; Begin conducting field tests; percentage of outfalls inspected for dry weather flows; number of illicit discharges located, within 12 months after the permit coverage is extended and annually for the permit term.
BMP categories to be implemented	Measurable goals and timeframes
Written Enforcement Response Procedures	Implement ERP's in the city ordinance to refer to the partnership with SWWD and to be available on city website. Completed within 12 months of extension of permit coverage.

4. Do you have procedures for record-keeping within your Illicit Discharge Detection and Elimination (IDDE) program as specified within the Permit (Part III.D.3.h.)? Yes No

If you answered **no**, indicate how you will develop procedures for record-keeping of your Illicit Discharge, Detection and Elimination Program, within 12 months of the date permit coverage is extended:

5. Provide the name or the position title of the individual(s) who is responsible for implementing and/or coordinating this MCM:

Bruce Hanson, Superintendent, Public Works

D. MCM 4: Construction site stormwater runoff control

1. The Permit (Part III.D.4) requires that, within 12 months of the date permit coverage is extended, existing permittees shall revise their current program, as necessary, and continue to implement and enforce a construction site stormwater runoff control program. Describe your current program:

Newport has a permit application that requires, for any construction site that disturbs 1 acre or more. We require review of construction site erosion and sediment control (ESC) plans before projects begin, and work with contractors to ensure appropriate and correct use of erosion and sediment control BMPs on sites.

2. Does your program address the following BMPs for construction stormwater erosion and sediment control as required in the Permit (Part III.D.4.b.):
- a. Have you established written procedures for site plan reviews that you conduct prior to the start of construction activity? Yes No
 - b. Does the site plan review procedure include notification to owners and operators proposing construction activity that they need to apply for and obtain coverage under the MPCA's general permit to *Discharge Stormwater Associated with Construction Activity No. MN R100001*? Yes No
 - c. Does your program include written procedures for receipt and consideration of reports of noncompliance or other stormwater related information on construction activity submitted by the public to the permittee? Yes No
 - d. Have you included written procedures for the following aspects of site inspections to determine compliance with your regulatory mechanism(s):
 - 1) Does your program include procedures for identifying priority sites for inspection? Yes No
 - 2) Does your program identify a frequency at which you will conduct construction site inspections? Yes No
 - 3) Does your program identify the names of individual(s) or position titles of those responsible for conducting construction site inspections? Yes No
 - 4) Does your program include a checklist or other written means to document construction site inspections when determining compliance? Yes No
 - e. Does your program document and retain construction project name, location, total acreage to be disturbed, and owner/operator information? Yes No
 - f. Does your program document stormwater-related comments and/or supporting information used to determine project approval or denial? Yes No
 - g. Does your program retain construction site inspection checklists or other written materials used to document site inspections? Yes No

If you answered **no** to any of the above permit requirements, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met.

D.2.c. The City reviews all reports of noncompliance as they are received and/or submitted. The city, thru its work-shop will review and ammend its policies to include written procedures on noncompliance complaints by the public within 12 months from the date the permit coverage is extended and annually for the term of the permit.

3. List the categories of BMPs that address your construction site stormwater runoff control program. Use the first table for categories of BMPs that you have established and the second table for categories of BMPs that you plan to implement over the course of the permit term.

Include the measurable goals with appropriate timeframes that each BMP category will be implemented and completed. In addition, provide interim milestones and the frequency of action in which the permittee will implement and/or maintain the BMPs. Refer to the EPA's *Measurable Goals Guidance for Phase II Small MS4s* (<http://www.epa.gov/npdes/pubs/measurablegoals.pdf>). **If you have more than five categories**, hit the tab key after the last line to generate a new row.

Established BMP categories

Measurable goals and timeframes

Storm Water Management Regulations Ordinance	Evaluate existing ordinance by comparing it to MPCA minimum standards; Complete a draft ordinance from the year 1 assessment; Implement new construction site erosion and sedimentation ordinance; complete evaluation of existing ordinance; complete and implement an ordinance within 12 months from the date the permit coverage is extended and annually for the term of the permit.
ESC Inspection and Enforcement Program	Inspection schedule; Performance Bond; number of construction sites for each year; number of warnings issued; number of stop work orders issued; number of financial security money taken for ESC noncompliance. From the date the permit coverage is extended and annually for the term of the permit.
Minimum Erosion and Sediment Control BMPs	Establish list of minimum ESC BMPs for construction activities; provide contractor list of required BMPs. From the date the permit coverage is extended and annually for the term of the permit.
Public Non Compliance Complaints and Reports	Review existing procedure and identify areas for revision; Implement procedure; develop a receipt log for taking information in regarding construction site issues and complaints; within 12 months from the date the permit coverage is extended and annually for the term of the permit.
BMP categories to be implemented	Measurable goals and timeframes
Written Enforcement Response Procedures	Implement ERP's in the city ordinance to refer to the partnership with SWWD and to be available on city website. Completed within 12 months from the date the permit coverage is extended and annually for the term of the permit.

4. Provide the name or the position title of the individual(s) who is responsible for implementing and/or coordinating this MCM:

Bruce Hanson, Superintendent, Public Works

E. MCM 5: Post-construction stormwater management

1. The Permit (Part III.D.5.) requires that, within 12 months of the date permit coverage is extended, existing permittees shall revise their current program, as necessary, and continue to implement and enforce a post-construction stormwater management program. Describe your current program:

Newport has a post-construction stormwater management ordinance to encourage the utilization of BMPs for stormwater runoff from new and redevelopment projects, as well as to ensure the maintenance and operation of the stormwater BMPs.

2. Have you established written procedures for site plan reviews that you will conduct prior to the start of construction activity? Yes No
3. Answer **yes** or **no** to indicate whether you have the following listed procedures for documentation of post-construction stormwater management according to the specifications of Permit (Part III.D.5.c.):
- a. Any supporting documentation that you use to determine compliance with the Permit (Part III.D.5.a), including the project name, location, owner and operator of the construction activity, any checklists used for conducting site plan reviews, and any calculations used to determine compliance? Yes No

- b. All supporting documentation associated with mitigation projects that you authorize? Yes No
- c. Payments received and used in accordance with Permit (Part III.D.5.a.(4)(f))? Yes No
- d. All legal mechanisms drafted in accordance with the Permit (Part III.D.5.a.(5)), including date(s) of the agreement(s) and names of all responsible parties involved? Yes No

If you answered **no** to any of the above permit requirements, describe the steps that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met.

E.3. The Newport MS4 will incorporate the permit requirements of Part III.D.5.c.; Revise the Stormwater Management Ordinance to include requirements for long-term maintenance of structural stormwater BMPs as required in Part III.D.5.a.(5) of the MS4 General Permit within 12 months from the date the permit coverage is extended and annually for the term of the permit.

- 4. List the categories of BMPs that address your post-construction stormwater management program. Use the first table for categories of BMPs that you have established and the second table for categories of BMPs that you plan to implement over the course of the permit term.

Include the measurable goals with appropriate timeframes that each BMP category will be implemented and completed. In addition, provide interim milestones and the frequency of action in which the permittee will implement and/or maintain the BMPs. Refer to the EPA's *Measurable Goals Guidance for Phase II Small MS4s* (<http://www.epa.gov/npdes/pubs/measurablegoals.pdf>). **If you have more than five categories**, hit the tab key after the last line to generate a new row.

Established BMP categories	Measurable goals and timeframes
Plan Review Procedures	Completion of plan review process and documentation procedures; Develop and implement Plan Review Program; number of plan reviews performed each year; completed plan review process and documentation procedures within 12 months from the date the permit coverage is extended and annually for the term of the permit.
Storm Water Management Plan	Maintain SWMP for Newport from the date the permit coverage is extended and annually for the term of the permit.

BMP categories to be implemented	Measurable goals and timeframes
Written Enforcement Response Procedures	Implement ERP's in the city ordinance to refer to the partnership with SWWD and to be available on city website. Completed within 12 months of extension of permit coverage.

- 5. Provide the name or the position title of the individual(s) who is responsible for implementing and/or coordinating this MCM:

Bruce Hanson, Superintendent, Public Works

F. MCM 6: Pollution prevention/good housekeeping for municipal operations

- 1. The Permit (Part III.D.6.) requires that, within 12 months of the date permit coverage is extended, existing permittees shall revise their current program, as necessary, and continue to implement an operations and maintenance program that prevents or reduces the discharge of pollutants from the permittee owned/operated facilities and operations to the small MS4. Describe your current program:

The city has a Storm Water Maintenance Training Program that is reviewed annually by the public works personnel. The plan includes: inspection and cleaning of the cities storm sewer system, salt applied on an annual cycle, annual and ongoing street sweeping, city fleet automobile maintenance program, hazardous material storage and recycling program and grass clipping and fertilizer review.

- 2. Do you have a facilities inventory as outlined in the Permit (Part III.D.6.a.)? Yes No

3. If you answered **no** to the above permit requirement in question 2, describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, this permit requirement is met:
4. List the categories of BMPs that address your pollution prevention/good housekeeping for municipal operations program. Use the first table for categories of BMPs that you have established and the second table for categories of BMPs that you plan to implement over the course of the permit term.

Include the measurable goals with appropriate timeframes that each BMP category will be implemented and completed. In addition, provide interim milestones and the frequency of action in which the permittee will implement and/or maintain the BMPs. For an explanation of measurable goals, refer to the EPA's *Measurable Goals Guidance for Phase II Small MS4s* (<http://www.epa.gov/npdes/pubs/measurablegoals.pdf>).

If you have more than five categories, hit the tab key after the last line to generate a new row.

Established BMP categories	Measurable goals and timeframes
Storm Water System Maintenance Training Program	Create a training program; implemented training program; number of employees trained per year (reviewed annually).
Storm drainage system inspection and cleaning	Document existing cleaning program and justification; number of sumps cleaned and inspected; number of sumps full of sediment or debris; Sump and Inlet cleaning and inspection schedule (annual).
Pond and outfall inspection and cleaning procedure program	Number of outfalls inspected (20% minimum); number of outfalls full of sediment or debris; Year 4 reevaluate inspection intervals from history; outfall cleaning procedures and outfall inspection schedule (annual).
Street deicing program	Year 3 – Evaluate alternative deicing products, equipment, or procedures; amount of salt applied to street; amount of sand applied to street 9annual).
Municipal Street Maintenance Program	Annual urban street sweeping (100% of the urban streets); number of street miles swept (ongoing – annual).
Equipment Maintenance Program	Establish vehicle maintenance program; implement vehicle maintenance program; number of equipment maintained; number of vehicles in fleet inspected each year (ongoing – annual).
Hazardous Material Storage and Recycling Program	Continue operating program; Year 3-Evaluate and document material storage and recycling program 9ongoing – annual).
Pesticide and Herbicide control program	Evaluate alternative fertilizer and herbicide products, equipment, or procedures; amount of Pesticide and Herbicide applied; Proper handling and application covered by training (annual).
Fertilizer Application Program	No phosphorus fertilizer; amount of fertilizer applied
Municipal lawn care program	Proper discharge of grass clippings; continue existing training program (annual).
BMP categories to be implemented	Measurable goals and timeframes
Quarterly inspections of stock pile/storage and material handling areas.	Revise the annual inspections to a quarterly inspection cycle. The city will review with in first 6 months of the extension of permit coverage is granted. Completed within 12 months of extension of permit coverage.

5. Does discharge from your MS4 affect a Source Water Protection Area (Permit Part III.D.6.c.)? Yes No
- a. If **no**, continue to 6.
- b. If **yes**, the Minnesota Department of Health (MDH) is in the process of mapping the following items. Maps are available at <http://www.health.state.mn.us/divs/eh/water/swp/maps/index.htm>. Is a map including the

following items available for your MS4:

- 1) Wells and source waters for drinking water supply management areas identified as vulnerable under Minn. R. 4720.5205, 4720.5210, and 4720.5330? Yes No
- 2) Source water protection areas for surface intakes identified in the source water assessments conducted by or for the Minnesota Department of Health under the federal Safe Drinking Water Act, U.S.C. §§ 300j – 13? Yes No
- c. Have you developed and implemented BMPs to protect any of the above drinking water sources? Yes No
6. Have you developed procedures and a schedule for the purpose of determining the TSS and TP treatment effectiveness of all permittee owned/operated ponds constructed and used for the collection and treatment of stormwater, according to the Permit (Part III.D.6.d.)? Yes No
7. Do you have inspection procedures that meet the requirements of the Permit (Part III.D.6.e.(1)-(3)) for structural stormwater BMPs, ponds and outfalls, and stockpile, storage and material handling areas? Yes No
8. Have you developed and implemented a stormwater management training program commensurate with each employee's job duties that:
- a. Addresses the importance of protecting water quality? Yes No
- b. Covers the requirements of the permit relevant to the duties of the employee? Yes No
- c. Includes a schedule that establishes initial training for new and/or seasonal employees and recurring training intervals for existing employees to address changes in procedures, practices, techniques, or requirements? Yes No
9. Do you keep documentation of inspections, maintenance, and training as required by the Permit (Part III.D.6.h.(1)-(5))? Yes No

If you answered **no** to any of the above permit requirements listed in **Questions 5 – 9**, then describe the tasks and corresponding schedules that will be taken to assure that, within 12 months of the date permit coverage is extended, these permit requirements are met:

10. Provide the name or the position title of the individual(s) who is responsible for implementing and/or coordinating this MCM:

Bruce Hanson, Superintendent, Public Works

VI. Compliance Schedule for an Approved Total Maximum Daily Load (TMDL) with an Applicable Waste Load Allocation (WLA) (Part II.D.6.)

- A. Do you have an approved TMDL with a Waste Load Allocation (WLA) prior to the effective date of the Permit? Yes No
1. If **no**, continue to section VII.
2. If **yes**, fill out and attach the MS4 Permit TMDL Attachment Spreadsheet with the following naming convention: *MS4NameHere_TMDL*.

This form is found on the MPCA MS4 website: <http://www.pca.state.mn.us/ms4>.

VII. Alum or Ferric Chloride Phosphorus Treatment Systems (Part II.D.7.)

- A. Do you own and/or operate any Alum or Ferric Chloride Phosphorus Treatment Systems which are regulated by this Permit (Part III.F.)? Yes No
1. If **no**, this section requires no further information.
2. If **yes**, you own and/or operate an Alum or Ferric Chloride Phosphorus Treatment System within your small MS4, then you must submit the Alum or Ferric Chloride Phosphorus Treatment Systems Form supplement to this document, with the following naming convention: *MS4NameHere_TreatmentSystem*.

This form is found on the MPCA MS4 website: <http://www.pca.state.mn.us/ms4>.

VIII. Add any Additional Comments to Describe Your Program

Stormwater Illicit Discharge and Illicit Connection

Section 1. The City Council of the City of Newport hereby ordains that Section 11.01 (Definitions) is hereby amended to *add* the following definitions:

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. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

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

ILLICIT DISCHARGE. Any direct or indirect non-storm water discharge to the storm drain system.

ILLICIT CONNECTIONS. An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water 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 land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT. Means a permit issued by EPA (or by a State 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 on an individual, group, or general area-wide basis.

NON-STORM WATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of storm water.

POLLUTANT. 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, ordinances, 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.

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.

STORM WATER. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER MANAGEMENT PLAN. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 2. The City Council of the City of Newport hereby ordains that Sections 150.300 thru 150.314 of the Newport City Code are to read as follows:

Sections:

- 150.300 Purpose
- 150.301 Applicability
- 150.302 Definitions
- 150.303 Responsibility for Administration
- 150.304 Compatibility with Other Regulations
- 150.305 Ultimate Responsibility
- 150.306 Discharge Prohibitions
- 150.307 Watercourse Protection
- 150.308 Industrial or Construction Activity Discharges
- 150.309 Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices
- 150.310 Notification of Spills
- 150.311 Right of Entry
- 150.312 Enforcement
- 150.313 Severability
- 150.314 Authority

ILLICIT DISCHARGE AND CONNECTION

150.300 PURPOSE

(A) The general purpose of this ordinance is to provide for the health, safety, and general welfare of the public through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the MS4 permit issued to the City of **Newport** by the Minnesota Pollution Control Agency (MPCA) under the National Pollutant Discharge Elimination System (NPDES) permit process. The objections of this ordinance are:

- (1) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user;
- (2) To prohibit illicit connections and discharges to the MS4;

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

150.301 APPLICABILITY

(A) This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by Section 150.306 (A) (1) a – d) of this Ordinance.

150.302 DEFINITIONS

(A) For the purposes of this ordinance, all terms, phrases, words, and their derivatives shall have the meanings as stated in Chapter 11 of the City Code.

150.303 RESPONSIBILITY FOR ADMINISTRATION

(A) The City of **Newport** shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of **Newport** may be delegated in writing by the City Administrator to persons or entities acting in the beneficial interest of or in the employ of the City.

150.304 COMPATIBILITY WITH OTHER REGULATIONS

(A) This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

150.305 ULTIMATE RESPONSIBILITY

(A) The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensue that there will be no contamination, pollution, or unauthorized discharge of pollutants.

150.306 DISCHARGE PROHIBITIONS

(A) Prohibition of Illegal Discharges.

(1) No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, street wash water, dechlorinated swimming pool water, and any other water source not containing a pollutant.

(i) For swimming pool discharges, water shall sit seven (7) days without the addition of chlorine to allow for chlorine to evaporate before discharge.

(ii) Discharge of swimming pools, crawl spaces, sump pumps, footing drains and other sources that may be determined to contain sediment or other forms or pollutants may

NOT be discharged directly to a gutter or storm sewer. This discharge must be allowed to flow over a vegetated area to allow filtering of pollutants, evaporation of chemicals and infiltration of water consistent with the storm water requirements of the City of **Newport**.

- b) Discharges or flow from firefighting, and other discharges specified in writing by the City of **Newport** as being necessary to protect public health and safety.
- c) Discharges associated with dye testing; however this activity requires a written notification to The City of **Newport** prior to the time of the test.
- d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the MPCA, 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.

(B) Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) 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.

(3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(4) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City of **Newport**.

(5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of **Newport** requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of **Newport**.

(C) Additional Discharge Prohibitions: Any owner or occupant of property within the City of **Newport** shall comply with the following requirements:

(1) Subsurface sewage treatment systems shall be maintained to prevent failure.

(2) Recreational vehicle sewage shall be disposed of to a proper sanitary waste facility.

(3) Mobile washing companies (carpet cleaning, mobile vehicle washing, etc.) shall dispose of wastewater to the sanitary sewer.

(4) All motor vehicle parking lots and private streets shall be swept, at a minimum, once a year in the spring to remove debris. Such debris shall be collected and properly disposed.

(5) Fuel, chemical residue, household hazardous waste or other types of potentially harmful material shall be disposed of properly.

(6) Objects, such as motor vehicle parts, containing grease, oil or other hazardous substances, and unsealed receptacles containing hazardous materials, shall not be stored in areas susceptible to runoff.

(7) Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be placed in a confined area to contain leaks, spills or discharges.

150.307 WATERCOURSE PROTECTION

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

150.308 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

(A) Submission of Notice of Intent (NOI) to the City of **Newport**.

(1) Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit is required in a form acceptable to the City of **Newport** prior to the allowing of discharges to the MS4.

a) Industrial activity includes activities subject to NPDES Industrial Storm Water Permits as defined in 40 CFR, Section 122.26 (b)(14).

b) Construction activity includes activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

(2) The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the NOI to the City of **Newport** at the same time the operator submits the original NOI to the EPA as applicable.

(3) The copy of the NOI must be delivered to the City of **Newport** either in person or by mailing it to:
Notice of Intent to Discharge Storm Water
City of Newport
1234 Lake Avenue S
Newport, MN 55555

(4) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the NOI to do so to the City of **Newport**.

150.309 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

(A) The City of **Newport** will 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 drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the

use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that 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 storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this ordinance. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

150.310 NOTIFICATION OF SPILLS

(A) 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 storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such 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 **Newport** in person or by phone no later than the next business day. 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. Failure to provide notification of a release as provided above is a violation of this ordinance.

150.311 RIGHT OF ENTRY

(A) The City of **Newport** shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance, including the right to set up, or require facilities owner to set up devices necessary to conduct monitoring and/or sampling of the facilities storm water discharge.

150.312 ENFORCEMENT

(A) Enforcement

(1) The City of **Newport** shall be responsible for enforcing this ordinance.

(B) Penalties

(1) Any person, firm or corporation failing to comply with or violating any of the provisions of this ordinance, shall be deemed guilty of a misdemeanor, and each day during which any violation of any of the provisions of this ordinance is committed, continued or permitted, shall constitute a separate offense. All land use and building permits shall be suspended until the applicant has corrected any and all violations.

(C) Emergency Cease and Desist Orders

(1) When the City of **Newport** finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City of **Newport** may issue an order to the violator directing it immediately to cease and desist all such violations.

(D) Suspension Due to the Detection of Illicit Discharge

(1) Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. Such suspension may

also be imposed if it is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger.

(E) Violations Deemed a Public Nuisance

(1) In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be 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.

150.313 SEVERABILITY

(A) The provisions of this ordinance are severable. If any provision of this ordinance or the application of any provision of this ordinance to any circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance, which can be given effect without the invalid provision or application.

150.314 AUTHORITY

(A) This article shall become effective upon its passage and publication in accordance with the law.

Section 3. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of **Newport**.

This Ordinance No. XX-XXX was adopted on this X day of June 2009, by a vote of __ Ayes and __ Nays.
Mayor

ATTEST:

City Administrator

This Ordinance No. XX-XXX was published on the _____ day of _____, 2009.



MEMO

TO: Mayor and City Council
 Deb Hill, City Administrator

FROM: Renee Helm, Executive Analyst

DATE: February 27, 2014

SUBJECT: Proposed Amendments to Chapter 4, Licensing, and Chapter 7, General Regulations and Offenses

BACKGROUND

Recently, staff reviewed Chapter 4, Licensing, of the City Code and found that a couple sections need to be cleaned up. The first is Section 410, Tobacco Sales. This Section of the City Code regulates licensing for businesses that sell tobacco products. Section 750, Tobacco, also regulates licensing for such businesses. Staff is recommending that Section 410 be repealed and combined with Section 750.

The second is Section 455, Peddlers, Solicitors, and Transient Merchants. This Section regulates licenses for peddlers, solicitors, and transient merchants and there is a discrepancy regarding background checks between this Section and Section 400.05, License Background Checks that needs to be reviewed.

DISCUSSION

In order to clean up the Sections listed above, the City Council will need to discuss the following items:

Sections 410 and 750 - Tobacco

The majority of Section 410 is already in Section 750 and therefore Section 750 does not need to be amended too much. However, there are some items that need to be discussed prior to creating the ordinance to repeal Section 410 and amend Section 750. The items are listed below:

- **Section 750.03, Subd. 1** - Per this Section, the City Council is required to approve all cigarette licenses prior to them being issued. Staff looked back through Council agendas and found that this has not been done since 2006. The City Council will need to discuss whether or not they would like to start approving cigarette licenses or if staff can continue to issue them as they have been doing since 2007.
- **Section 750.03, Subd. 3** - Currently, all cigarette licenses expire December 31 no matter when they were issued. The City Council will need to discuss whether or not they would like to have the license expire one year from date of issuance or December 31. Section 400.03 states that tobacco licenses shall expire December 31 of each year.
- **Section 750.13** - This Section outlines penalties for license violations and does not match Section 410.05 which also outlines penalties. Below are the penalties from each section:

	Section 410	Section 750
Licensees	1st Violation - At least one day suspension in addition to any criminal or civil penalties 2nd Violation - At least three days suspension in addition to any criminal	1st Violation - \$75 Administrative Fine 2nd Violation - \$200 Administrative Fine 3rd Violation - \$250 Administrative

	or civil penalties 3rd Violation - At least seven days suspension in addition to any criminal or civil penalties 4th Violation - License is revoked	Fine and suspended for at least seven days
Employees and Other Individuals	N/A	1st Violation - \$75 Administrative Fine 2nd Violation - \$200 Administrative Fine 3rd Violation - \$250 Administrative Fine
Minors	N/A	1st Violation - \$75 Administrative Fine 2nd Violation - \$200 Administrative Fine 3rd Violation - \$250 Administrative Fine

The City Council will need to discuss which penalties should be enforced. The penalties from Section 410 are the same as the penalties for liquor license violations.

The only item that is not in Section 750 and would need to be moved from Section 410 is Section 410.03, Subd. 3 regarding multiple locations.

Sections 400.05 and 455.03, Subd.5 - Background Checks for Solicitors, Peddlers, and Transient Merchants

These two sections contradict one another in regards to conducting background checks for solicitors, peddlers, and transient merchants. Per Section 400.05, the Police Department is required to automatically conduct a background check on solicitors and peddlers whereas Section 455.03, Subd. 5 states that the City Council shall order the background check. The City Council will need to discuss whether the Police Department should automatically conduct the background check or if the Council should order it. If the City Council wants the Police Department to automatically conduct the background check transient merchants will need to be added to the list in Section 400.05.

Attached for your review are Sections 400.03, 400.05, 410, 455.03 and 750.

RECOMMENDATION

It is recommended that the City Council provide direction on the items listed above. Once direction is received, staff will bring a draft ordinance at the next Council meeting for approval.

CHAPTER 4. LICENSING

Section 400 - General

400.03 Terms and Fees. The fee, term, and expiration date for license or permits issued under this Chapter shall be as follows:

<u>Type of License or permit</u>	<u>Term</u>	<u>Expiration Date</u>
Kennel	One year	December 31
Tobacco Sales	One year	December 31
Games of Skill	One year	December 31
<u>Type of License or permit</u>	<u>Term</u>	<u>Expiration Date</u>
Rubbish Hauler	One year	December 31
Christmas Tree Sales	One year	December 31
House Sewer Contractors	One year	December 31
Gas Installation	One year	December 31
Peddlers and Solicitors	One Year	December 31
Transient Merchants	One Year	December 31
Seasonal Lawful Fireworks Sales	Indicated on license	
Incidental Lawful Fireworks Sales	One Year	December 31

400.05 License Background Checks

Subd. 1 Purpose. The purpose and intent of this section is to establish regulations that will allow law enforcement to access Minnesota's Computerized Criminal History information for the specific noncriminal purpose of licensing background investigations for the licenses described in subsection B of this section.

Subd. 2 Background Investigation Required. The City's Police Department is hereby required, as the exclusive entity within the City, to conduct a criminal history background investigation on the applicants for the following licenses or permits within the City:

- A. Alcoholic Beverages
- B. Massage Therapy – Individual License
- C. Massage Therapy – Business License
- D. Pawnshops/Precious Metal Dealers
- E. Peddlers
- F. Solicitors

Subd. 3 BCA Data. In conducting the criminal history background investigation in order to screen license applicants, the Police Department is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehension Computerized Criminal History information system (BCA Data) in accordance with BCA policy. Any BCA Data that is accessed and acquired shall be maintained by the Police Department under the care and custody of the Chief of Police or his/her designee. A summary of the results of the BCA Data may be released by the Police Department to the hiring authority, including the City Council, the City Administrator, the City Attorney or other City staff involved in the licensing process.

Subd. 4 Written Authorization. Before the investigation is undertaken, the applicant must authorize the Police Department by written consent to undertake the investigation. The written consent must fully comply with the provisions of Minnesota Statutes Chapter 13 regarding the collection, maintenance and use of the

information. Except for the positions set forth in Minnesota Statutes Section 364.09, the City will not reject an applicant for a license on the basis of the applicant's prior conviction unless the crime is directly related to the license sought and the conviction is for a felony, gross misdemeanor, or misdemeanor punishable by jail. If the City rejects the applicant's request on this basis, the City shall notify the applicant in writing of the following:

- A. The grounds and reasons for the denial.
- B. The complaint and grievance procedure set forth in Minnesota Statutes Section 364.06.
- C. The earliest date the applicant may reapply for the license.
- D. That all competent evidence of rehabilitation will be considered upon reapplication.

Section 410 - Tobacco Sales

410.01 Definition. "Tobacco" or "Tobacco Products" shall mean any substance or item containing tobacco leaf, including, but not limited to, cigarettes; cigars; pipe tobacco; snuff fine cut or other chewing tobacco; cheroot; stogies; perique; granulated plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

410.02 Persons Ineligible. No license shall be issued except to a person of good moral character.

410.03 Places Ineligible.

Subd. 1 Business. No license shall be issued to an applicant for tobacco sales at any place other than by place of business.

Subd. 2 Movable Businesses. No license shall be issued for a moveable place of business.

Subd. 3 Multiple Location. No license shall be issued for tobacco sales at more than one place of business. Each individual cigarette machine shall be licensed.

410.04 Prohibitions.

Subd. 1 Age. No person shall sell, allow to be sold, or give away any tobacco products to any person under the age of 18.

Subd. 2 Drugs. No person shall sell, keep for sale, or otherwise dispose of any cigarette containing opium, morphine, jimson weed, belladonna, strychnia, cocaine, marijuana, or any other poisonous or deleterious substance except nicotine.

410.05 Administrative Penalties. Any licensee found to have violated this chapter or whose employee shall have violated this chapter shall be charged an administrative penalty. Penalties occurring within a forty-eight (48) month period shall be as follows:

Subd. 1 First Violation. At least one day suspension or, at the city council's discretion, participation of all employees in an educational program approved by the public safety director, in addition to any criminal or civil penalties which may be imposed.

Subd. 2 Second Violation. At least three (3) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

Subd. 3 Third Violation. At least seven (7) consecutive days' suspension in addition to any criminal or civil penalties which may be imposed.

Subd. 4 Fourth Violation. The license shall be revoked.

Section 455 - Peddlers, Solicitors, & Transient Merchants

455.03 Licensing.

Subd. 5 Procedure. Upon receipt of the completed application and payment of the license fee, the City Clerk-Administrator shall forward the application to the Council within two (2) regular business days of receipt. An application shall be determined to be complete only if all required information is provided. The City Clerk-Administrator, within two regular business days of receipt, shall determine if the application is complete. If the Clerk-Administrator determines that the application is incomplete, the Clerk-Administrator shall inform the applicant of the required necessary information which is missing. The Council shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application. Within ten (10) regular business days of receiving the application from the City Clerk-Administrator, the Council shall vote whether or not to issue the license. If the Council approves the application, the Clerk-Administrator shall be instructed to issue a license to the applicant. If the Council rejects the application, the applicant shall be notified in writing of the Council's decision, the reason for the denial, and of his or her right to appeal the denial by requesting, within twenty (20) days of receiving the Council's notice of rejection, a public hearing to be heard by the City Council within twenty (20) days of the date of the request. The final decision of the Council following the public hearing shall be appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

CHAPTER 7. GENERAL REGULATIONS AND OFFENSES

Section 750 - Tobacco

750.01 Purpose. Because the City recognizes that many person under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices and nicotine or lobelia delivery devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies, which the City hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco related devices and nicotine or lobelia delivery devices, and to further the purposes of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco related devices and nicotine or lobelia delivery devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn.Stat. 144.391 as it may be amended from time to time

750.02 Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions, the singular shall include the plural and the plural shall include the singular. the masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Subd. 1 Compliance Checks. "Compliance Checks" shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco related devices and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. Compliance Checks shall involve the use of minors as authorized by this ordinance. Compliance Checks shall also mean the use

of minors who attempt to purchase tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by State and Federal laws. Compliance Checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or Local laws and regulations relating to tobacco, tobacco products, tobacco related devices and nicotine or lobelia delivery devices.

Subd. 2 Individually Packaged. “Individually packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subd. 3 Indoor Area. “Indoor area” shall mean all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

Subd. 4 Loosies. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

Subd. 5 Minor. “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 6 Moveable Place of Business. “Moveable Place of Business: shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Subd. 7 Nicotine or Lobelia Delivery Devices. “Nicotine or Lobelia Delivery Devices” shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 8 Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, restaurants and drug stores.

Subd. 9 Sale. A “sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 10 Self-Service Merchandising. “Self-Service Merchandising” shall mean open displays of tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee’s employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 11 Smoking. “Smoking” shall mean inhaling or exhaling smoke from any lighted or heated cigar,

cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

Subd. 12 Tobacco or Tobacco Products. “Tobacco” or “Tobacco products” shall include cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Subd. 13 Tobacco Related Devices. “Tobacco related devices” shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

Subd. 14 Vending Machine. “Vending Machine” shall mean any mechanical, electrical or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products, or tobacco device.

750.03 License. No person shall sell or offer any tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery device without first having obtained a license to do so from the City.

Subd. 1 Application. An application for a license to sell tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices shall be made on a form provided by the City. The application shall contain the full name of the applicant, the applicant’s residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City deems necessary. Upon receipt of a completed application, the City Administration shall forward the application to the Council for action at its next regularly scheduled council meeting. If the administration shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2 Action. The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary.

Subd. 3 Term. Except as herein otherwise provided, licenses issued under this ordinance shall be valid for one calendar year from the date of issue. The City, by ordinance, may from time to time establish one uniform period for all such licenses.

Subd. 4 Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subd. 5 Transfers. licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

Subd. 6 Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subd. 7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8 Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subd. 9 Issuance as privilege and not a right. The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subd. 10 Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.

750.04 Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be set annually by the City.

750.05 Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the City must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section.

- A. The applicant is under the age of 18 years.
- B. The applicant has been convicted within the past five years of any violation of a Federal, State, or Local law, ordinance provision, or other regulation relating to tobacco or tobacco products, tobacco related devices or nicotine or lobelia delivery devices.
- C. The applicant has had a license to sell tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State, or other Local law, ordinance, or other regulation, from holding such a license.

750.06 Prohibited Sales. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the

tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device between the licensee or the licensee's employee, and the customer.

- D. By means of loosies as defined in Section 200 of this ordinance.
- E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. By any other means, to any other person, or in any other manner or form prohibited by Federal, State or other Local law, ordinance provision or other regulation.

750.07 Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

750.08 Self-Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco related device or the nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco related devices and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices at the time this ordinance is adopted shall comply with this Section within 60 days following the effective date of this ordinance except where 90% of the sales of the particular establishment are tobacco related products and minors are at all times prohibited from entering the licensed establishment.

750.09 Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

750.10 Compliance Checks and Inspections. All licensed premises shall be open to inspection by the City police or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel.

Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco related devices or nicotine or lobelia delivery devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

750.11 Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1 Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device to any minor.

Subd. 2 Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 3 Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device.

Subd. 4 Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device or nicotine or lobelia delivery device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5 Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

750.12 Violations.

Subd. 1 Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2 Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3 Hearing Officer. The City Council shall serve as the hearing officer.

Subd. 4 Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officers' reasons for finding a violation and the penalty to be imposed under Section 1300 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5 Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the City in which the alleged violation occurred.

Subd. 6 Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7 Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

750.13 Penalties.

Subd. 1 Licensees. Any licensee found to have violated this ordinance shall be charged an administrative fine of \$75 for a first violation of this ordinance, \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

Subd. 2 Employees of Licensees and Other Individuals. Employees of Licensees and other individuals, other than minors regulated by subdivision 3 of the Subsection, found to be in violation of this ordinance shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense within a twenty-four month period; and \$250 for a third or subsequent offense within a twenty-four month period.

Subd. 3 Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense within a twenty-four month period; and \$250 for a third or subsequent offense within a twenty-four month period.

Subd. 4 Community Service and Other Conditions. The hearing officer may, in its sole discretion, allow community service to be substituted for some or all of the fine. Such substitution shall be a rate established by the hearing officer. The hearing officer may also stay the imposition of some or all of the fine on such other conditions that it, in its sole discretion, deems appropriate.

Subd. 5 Misdemeanor. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

750.14 Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

750.15 Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

750.16 Effective Date. This ordinance shall take effect the day following publication in the City's official newspaper.