ORDINANCE NO. __________

ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF ___________________________, BY ADDING CHAPTER __________,
“CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL”

Section 1. THE CODE OF ORDINANCES, CITY OF __________________________, is hereby amended to add CHAPTER
“CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL,” in the form attached hereto.

Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall be effective from and after the final passage, approval and publication as provided by law.

PASSED AND APPROVED this _______ day of ________, 20_____.

______________________________
Mayor

(SEAL)

ATTEST:

______________________________
City Clerk

1 IMPORTANT NOTE: For drafting purposes, this ordinance has been prepared for adoption by a city; however, with appropriate modifications it may serve as a model for other governmental subdivisions as well.
The presence of this watermark confirms that this is the official committee draft coordinated by the Iowa Association of Municipal Utilities with IDNR funding, as of 06-27-05. The drafting committee included representatives of municipalities, IAMU, IDNR, NRCS and URBAN, with legal review by Gordon Greta of Ahlers & Cooney, P.C. Similar looking drafts lacking this watermark have been altered and do not represent the work of the committee.

APPROVED AS TO FORM:

City Attorney 2

I, ____________________________, City Clerk of the City of ____________________________, Iowa, do hereby certify that the foregoing ORDINANCE was passed and approved by the City Council of the City of ____________________________ Iowa, on the _________ day of _____________, 20___, and was published in the ____________________________, a newspaper of general circulation in the said City of ____________________________, on the _________ day of ____________________________, 20___.

Dated this _________ day of ____________________________, 20_____.

________________________________________
City Clerk

2 This model ordinance is furnished as a drafting guide for attorneys representing governmental subdivisions in Iowa that are subject to NPDES Permit Program requirements. CAVEAT: THIS MODEL ORDINANCE SHOULD NOT BE ADOPTED WITHOUT CONFIRMING INDEPENDENT LEGAL RESEARCH BY AN ATTORNEY LICENSED TO PRACTICE LAW IN IOWA. LOCAL CIRCUMSTANCES WILL VARY SIGNIFICANTLY FROM JURISDICTION TO JURISDICTION. CONSIDERATION OF SUCH AN ORDINANCE CALLS FOR CAREFUL ANALYSIS AND DETERMINATION OF A NUMBER OF CRITICAL POLICY ISSUES BY THE GOVERNING BODY OF THE JURISDICTION.
CHAPTER _______, CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

SECTION 1. FINDINGS:

1.1. The U.S.EPA’s National Pollutant Discharge Elimination System (“NPDES”) permit program (Program) administered by the Iowa Department of Natural Resources (“IDNR”) requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit). The City of (City) is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City’s MS4 Permit is on file at the office of the city clerk and is available for public inspection during regular office hours.

1.2. The Program requires certain individuals engaged in construction activities (applicant or applicants) to submit an application to the IDNR for a State NPDES General Permit #2. Notwithstanding any provision of this ordinance, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2 and a City Construction Site Erosion and Sediment Control (COSESCO) Permit and any other requirement of state or federal law or administrative rule.

1.3. As a condition of the City’s MS4 Permit, the City is obliged to undertake primary responsibility for administration and enforcement of the Program by adopting a COSESCO ordinance designed to achieve the following objectives:

1.3.1. Any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision (“applicant”) required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall also be required to obtain from the City a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL permit (City COSESCO Permit) in addition to and not in lieu of the State NPDES General Permit #2; and

1.3.2. The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote applicants’ compliance with State NPDES General Permits #2 and City COSESCO Permits.

1.4. No state or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made

3 A list of cities and entities subject to the Program as of the date of preparation of this model ordinance can be found at this website: http://www.iowadnr.com/water/stormwater/ms4.html. Copies of all the forms associated with the NPDES Program can be found at this website: http://www.iowadnr.com/water/stormwater/forms.html.
subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.¹

1.5. Terms used in this ordinance shall have the meanings specified in the Program.

SECTION 2. APPLICATION PROCEDURE FOR OBTAINING AND MAINTAINING A CITY CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL (COSESCO) PERMIT

2.1 All persons required by law or administrative rule to obtain a State NPDES General Permit #2 from the IDNR are required to obtain a City COSESCO Permit.⁶

2.2 Applications for City COSESCO Permits shall be made on forms approved by the City which may be obtained from the office of the [city clerk][city administrator][community development department].

2.3 An applicant for a City COSESCO Permit shall pay fees as follows:

2.3.1 An application fee at the time of application [in the amount of_________________] [pursuant to the following schedule:]⁷

2.3.2 For each inspection required by this ordinance, the applicant shall pay an inspection fee in the amount of __________.⁸

2.3.3 Failure of the applicant to pay an inspection fee within thirty (30) days of billing shall constitute a violation of this ordinance.

2.4 An applicant in possession of a State NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City COSESCO Permit:

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¹ A city may choose to create a stormwater utility in conjunction with a stormwater fee ordinance as a means of providing a source of funding in addition to or in lieu of the application and inspection fees established by this ordinance.

⁵ Instead of requiring an applicant to obtain a separate city COSESCO permit, a city may choose to amend its grading permit ordinance, building permit ordinance, or site plan approval ordinance to require compliance with this COSESCO ordinance as a condition for issuing a grading permit, building permit or site plan approval; in such event, this §1.3.1 might read, “Any person, firm, sole proprietorship, partnership, corporation state agency or political subdivision (‘applicant’) required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall not be issued a grading permit (or grading permit or site plan approval) until the applicant has fully complied with the provisions of this COSESCO ordinance.” Contemporaneously, the city grading permit ordinance, building permit ordinance or site plan approval ordinance should be amended to require compliance with this COSESCO ordinance. Other provisions of this COSESCO ordinance will also need to be edited to eliminate any requirement for a separate COSESCO Permit. Finally, the grading permit fee, building permit fee, or site plan approval fee could be adjusted to cover the city’s enforcement costs in lieu of COSESCO Permit application fee.

⁶ State NPDES General Permits #2 are required when more than one (1) acre of land is subject to the program. Cities may choose to require City COSESCO Permits in the event of even smaller surface disturbances, where sediment leaving a site and entering a municipal storm sewer would constitute an illicit discharge, making the municipality subject to enforcement actions from IDNR or U.S.EPA.

⁷ The application fee should be set on the basis of a cost-accounting of the City’s administrative expenses, including labor costs, associated with processing the application It would not be unreasonable to establish a schedule of fees dependent upon the scope of the project subject to each City COSESCO Permit. If a city elects to engage an independent contractor to process applications, the costs of such independent contractor should be included in the computation of this fee.

⁸ As indicated above, this and all fees associated with the ordinance should be based on cost-accountings of the activities which the City must undertake or sub-contract to accomplish the purposes of the ordinance.
2.4.1 applicant’s plans, specifications and supporting materials previously submitted to the IDNR in support of applicant’s application for the State NPDES General Permit #2;
2.4.2 applicant’s authorizations issued pursuant to applicant’s State NPDES General Permit #2; and
2.4.3 a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with this ordinance.

2.5 Every SWPPP submitted to the City in support of an application for a City COSESCO Permit:

2.5.1 shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES General Permit #2;
2.5.2 shall, if the applicant is required by law to file a Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, comply with all mandatory minimum requirements pertaining to such applications;
2.5.3 shall comply with all other applicable state or federal permit requirements in existence at the time of application; and
2.5.4 shall be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City; and
2.5.5 shall include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this ordinance.

9 As of the time of drafting this model ordinance, minimum mandatory requirements promulgated by the IDNR for issuance of a State NPDES General Permit #2 are as set out in IDNR publication “IOWA DEPARTMENT OF NATURAL RESOURCES NPDES GENERAL PERMIT NO. 2. STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY FOR CONSTRUCTION ACTIVITIES, EFFECTIVE DATE – OCTOBER 1, 2002 TO OCTOBER 1, 2007,” including but not limited to “PART IV. STORM WATER POLLUTION PREVENTION PLANS,” which is accessible at this website: http://www.iowadnr.com/water/stormwater/forms/2_general.pdf. Said IDNR publication in turn references water quality standards. Current water quality standards are specified in the Iowa Administrative Code, in section 567, chapter 61, at this website: http://www.legis.state.ia.us/Rules/Current/iac/567iac/56761/56761.pdf. As is the case with any federal or state program, mandatory minimum SWPPP requirements may change over time, and it is vital that local officials responsible for enforcement of this ordinance stay abreast of such changes. It is recommended that these provisions be adopted by reference rather than included verbatim within the ordinance for at least three reasons: (1) adoption by reference minimizes the length and complexity of the ordinance; (2) if the IDNR changes requirements, adoption by reference avoids the necessity of rewriting the ordinance; and (3) adoption by reference makes it clear to applicants that they are not being asked to comply with conflicting local and state requirements.

10 As of the time of drafting this model ordinance, the circumstances necessitating the filing of such a joint application are as set out in the Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, which is accessible at this website: http://www.iowadnr.com/other/files/jointpermit.pdf.

11 The requirement that a SWPPP shall be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control credentialed in a manner acceptable to the City gives the City a basis for recourse against such professional’s malpractice carrier in the event a SWPPP later proves to be faulty. Cities not desiring such assurance or opportunity for recourse may choose to dispense with this requirement in favor of a less arduous standard.
2.6 [OPTIONAL] In addition to the SWPPP requirements stated in subparagraph 2.5 immediately above which constitute minimum mandatory requirements imposed by the Program, every SWPPP submitted to the city in support of an application for a City COSESCO Permit shall comply with the Statewide Urban Design and Specifications (SUDAS)\(^\text{13}\) standard design criteria, including but not limited to design, location, and phased implementation of effective, practicable stormwater pollution prevention measures, and shall also:

2.6.1 limit total off-site annual aggregate sediment yield for exposed areas to an equivalent amount resulting from sheet and rill erosion equal to an annual, cumulative soil loss rate not to exceed the standard established from time to time by Soil and Water Conservation Districts; erosion rates can exceed soil loss limits as long as sediment yield does not exceed that expected from allowable erosion rates; and

2.6.2 identify the nature of the construction activity and the potential for sediment and other pollutant discharges from the site; and

2.6.3 calculate the predicted erosion and estimated sediment yield for the construction site using the USDA Revised Universal Soil Loss Equation (RUSLE II); and

2.6.4 assure that stockpiles of soil or other materials subject to erosion by wind or water are covered, vegetated, or otherwise effectively protected from erosion and sedimentation in accordance with the amount of time the material will be on site and the manner of its proposed use; no stockpiling is allowed in the street; and

2.6.5 identify measures and procedures to reasonably minimize site soil compaction and provide soil quality restoration as specified; and

2.6.6 assure that all temporary erosion and sediment controls shall not be removed until the City has determined that the site has been permanently stabilized; and

2.6.7 assure that all disturbed sites be permanently stabilized with 70% perennial cover as measured by the USDA line transect method; and

2.6.8 identify methods to prevent sediment damage to adjacent properties and sensitive environmental areas such as water bodies, plant communities, rare, threatened and/or endangered species habitat, wildlife corridors, greenways, etc.; and

2.6.9 provide for design and construction methods to stabilize steep or long continuous slopes; and,

\(^{12}\) These additional recommended standards were developed by representatives from Phase I and Phase II cities, IAMU, IDNR, Soil and Water Conservation Districts, URBAN, and USDA’s Natural Resources Conservation Service, pursuant to an IDNR 319 grant funded by the U.S.EPA. The recommendations are presented in no particular order. It is for each city to determine as a matter of policy which optional standards, if any, it chooses to impose.

\(^{13}\) SUDAS standard design criteria can be found at this website: www.iowasudas.org.
2.6.10 include measures to control the quantity and quality of stormwater leaving a site before, during and after construction; and

2.6.11 provide for stabilization of all waterways and outlets; and,

2.6.12 protect storm sewer infrastructure from sediment loading/plugging; and

2.6.13 specify precautions to be taken to contain sediment when working in or crossing water bodies; and

2.6.14 assure stabilization of disturbed areas, including utility construction areas, as soon as possible; and

2.6.15 protect outlying roads from sediment and mud from construction site activities, including tracking; and

2.6.16 provide for disposal of collected sediment and floating debris; and

2.6.17 assure that when working near sensitive waters, the specific practices itemized immediately below are utilized:

2.6.17.1 during construction:

2.6.17.1.1 all exposed soil areas with a slope of 3:1 or steeper, that have a continuous positive slope to a sensitive water, should have temporary erosion protection or permanent cover within three (3) days after the area is no longer actively being worked; all other slopes that have a continuous positive slope to a sensitive water should have temporary erosion protection or permanent cover within seven (7) days after the area is no longer actively being worked, and

2.6.17.1.2 temporary sediment basin requirements should be used for common drainage locations that serve an area with five (5) or more acres disturbed at one time; and

2.6.17.2 buffer zone: provide for the maintenance at all times of an undisturbed buffer zone consisting of not less than 100 linear feet from the special water (not including tributaries); exceptions from this for areas, such as water crossings or limited water access, are allowed if the applicant fully documents in the SWPPP the circumstances and reasons that the buffer encroachment is necessary; all potential water quality, scenic and other environmental impacts of these exceptions should be minimized and documented in the SWPPP for the project; and

2.6.17.3 enhanced temperature controls: design the permanent stormwater management system such that the discharge from the project will minimize any increase in the temperature.

2.6.17.3.1 minimize new impervious surfaces; and/or
2.6.17.3.2 other methods that will minimize any increase in the temperature of the sensitive waters.

2.7 Issuance by the City of a City COSESCO Permit shall be a condition precedent for the issuance of a City building permit or site plan approval.

2.8 For so long as a construction site is subject to a State NPDES General Permit #2 or a City COSESCO Permit, the applicant shall provide the City with current information as follows:

2.8.1 The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES General Permit #2 and the City COSESCO Permit;

2.8.2 The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractors(s) that will implement each erosion and sediment control measure identified in the SWPPP.

2.8.3 Applicant’s failure to provide current information shall constitute a violation of this ordinance.

2.9 Developers can transfer State NPDES General Permit #2 and the City COSESCO Permit responsibility to homebuilders, new lot owners, contractors and subcontractors. Transferees must agree to the transfer in writing, must agree to fulfill all obligations of the SWPPP, the State NPDES General Permit #2 and the City COSESCO Permit. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold. A developer shall notify the City of any application to the DNR for release of any property from a General Permit #2 pursuant to 567 IAC 64.6(b) or any similar successor provision.

2.10 Upon receipt of an application for a City COSESCO Permit, the City shall either find that the application complies with this ordinance and issue a City COSESCO Permit in accordance with this ordinance, or that the application fails to comply with this ordinance, in which case the City shall provide a bill of particulars identifying non-compliant elements of the application.\(^\text{14}\)

2.11 Application for termination of a City COSESCO Permit shall be made in the following manner.\(^\text{15}\)

SECTION 3. INSPECTION PROCEDURES FOR CITY COSESCO PERMITS.

3.1 All inspections required under this ordinance shall be conducted by [the city engineer][the city public works director][the community development

\(^\text{14}\) Each city must determine for itself, based on the availability and expertise of city staff, whether this determination will be made “in-house” or by a third-party contractor designated by the city. In any event, it is imperative that the total cost of such determination should be the basis for setting the application fee specified above.

\(^\text{15}\) Some cities may desire to include a procedure for terminating a COSESCO Permit; the circumstances under which a city may choose to allow termination is a policy determination to be made by the City Council.
director, [the building inspector], [a subcontractor credentialed in a manner satisfactory to the city], hereinafter referred to as the “enforcement officer.”

3.2 Applicant shall notify the City when all measures required by applicant’s SWPPP have been accomplished on-site, whereupon the City shall conduct an inspection for the purpose of determining compliance with this ordinance, and shall within a reasonable time thereafter report to the applicant either that compliance appears to have been achieved, or that compliance has not been achieved, in which case the City shall provide a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the City’s bill of particulars. For good cause shown, the City may extend the deadline for taking corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance. 16

3.3 Construction shall not occur on the site at any time when the City has identified conditions of non-compliance. 17

3.4 Construction activities undertaken by an applicant prior to resolution of all discrepancies specified in the bill of particulars shall constitute a violation of this ordinance. 18

3.5 The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

SECTION 4. MONITORING PROCEDURES FOR CITY COSESCO PERMITS

4.1 Upon issuance of a City COSESCO Permit, an applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of stormwater discharge in a manner inconsistent with applicant’s SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.

4.1.1 Such report shall be made by the applicant to the enforcement officer immediately but in any event within twenty-four (24) hours of the change of circumstances or site conditions.

4.1.2 Failure to make a timely report shall constitute a violation of this ordinance.

4.2 Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of stormwater discharge in a manner

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16 The precise manner of inspection is not specified in the law or the rules. Accordingly, this paragraph is designed to provide an example of how a city might set up an inspection program. Moreover, as of the date of this model COSESCO ordinance, all MS4 cities do not have identical inspection requirements. Prior to finalizing this provision, a city should confirm its inspection obligations specified in its MS4 Permit as originally issued or subsequently amended.

17 This prohibition is not specified in the law or the rules. However, it would seem sensible to include such a provision to make enforcement more effective.

18 This provision is not specified in the law or the rules, but basic ordinance drafting principles suggest that matters constituting ordinance violations be set out explicitly.
inconsistent with applicant’s SWPPP, State NPDES General Permit #2
and/or City COSESCO Permit.

4.3 Upon receiving a report pursuant to the previous subsections, the
enforcement officer shall conduct an inspection of the site as soon as
reasonably possible and thereafter shall provide the applicant with a bill of
particulars identifying the conditions of non-compliance. The applicant shall
immediately commence corrective action and shall complete such corrective
action within twenty-four (24) hours of receiving the City’s bill of
particulars. For good cause shown, the City may extend the deadline for
completing corrective action. Failure to take corrective action in a timely
manner shall constitute a violation of this ordinance, whereupon the
enforcement officer shall immediately commence enforcement actions
specified in SECTION 5 below.

4.4 Unless a report is made to the enforcement officer pursuant to the previous
subsections, the enforcement officer shall conduct at least one unannounced
inspection during the course of construction to monitor compliance with the
State NPDES General Permit #2 and the City COSESCO Permit. If the
inspection discloses any significant non-compliance, the enforcement
officer shall provide the applicant with a bill of particulars identifying the
conditions of non-compliance. The applicant shall immediately commence
corrective action and shall complete such corrective action within twenty-
four (24) hours of receiving the City’s bill of particulars. For good cause
shown, the City may extend the deadline for completing corrective action.

4.5 The City shall not be responsible for the direct or indirect consequences to
the applicant or those third-parties for non-compliant conditions undetected by
inspection.

SECTION 5. ENFORCEMENT

5.1 Violation of any provision of this ordinance may be enforced by civil action
including an action for injunctive relief. In any civil enforcement action,
administrative or judicial, the City shall be entitled to recover its attorneys’
fees and costs from a person who is determined by a court of competent
jurisdiction to have violated this ordinance.

5.2 Violation of any provision of this ordinance may also be enforced as a
municipal infraction within the meaning of §364.22, pursuant to the City’s
municipal infraction ordinance.¹⁹

¹⁹ A city may consider various enforcement mechanisms. However, the Iowa Code furnishes cities with a very
useful tool called “municipal infractions.” A municipal infraction is a hybrid between a crime and a common law
tort, e.g., nuisance, but it is much easier to establish than either a crime or a tort. If a city adopting this ordinance
does not already have a municipal infraction ordinance, one should be seriously considered for reasons which are
beyond the scope of this model ordinance.
5.3 Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

SECTION 6. PERFORMANCE BOND OR CASH SECURITY

6.1 Along with the application for a City COSESCO Permit, the applicant shall post security for compliance with all requirements imposed by the State NPDES General Permit #2 and the City COSESCO Permit as well as necessary remedial work resulting from violation of any provision of this ordinance in an amount of $_________________ per gross acre or $____________________ for each single or twin family home, whichever is greater. This amount shall apply to the maximum acreage of soil that will be simultaneously exposed during the project’s construction.

6.2 Acceptable forms of Performance Security include the following:
   6.2.1 Performance Bonds;
   6.2.2 Surety Bonds;
   6.2.3 Money Orders;
   6.2.4 Certificates of Deposit.

6.3 The application form signed by the applicant for a City COSESCO Permit shall include the following commitment by the applicant: “In addition to the performance security posted with this application, the undersigned applicant hereby agrees to defend, indemnify and hold the City harmless from any and all claims, damages or suits arising directly or indirectly out of any act of commission or omission by the applicant, or any employee, agent, assign or contractor or subcontractor of the applicant, in connection with applicant’s State NPDES General Permit #2 and/or City COSESCO Permit.

SECTION 7. APPEAL

7.1 Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the city council pursuant to the following rules:
   7.1.1 The appeal must be filed in writing with the city clerk within five (5) business days of the decision or enforcement action.
   7.1.2 The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the

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20 It must be acknowledged that the financial security provisions of this SECTION 6 are stringent and may even be deemed by city officers or applicants as inordinately so. Accordingly, cities may choose a more flexible menu of security options, including but not limited to letters of credit. Cities might also choose to include a provision such as, “…or any other form of security acceptable to the City…,” provided that cities choosing to exercise such discretion must be prepared to demonstrate a lack of bias if any particular ad-hoc security requirement decision is challenged by a disgruntled applicant.

21 Even if a city chooses to dispense with a Performance Bond or Cash Security, the “defend and hold harmless” terms of this §6.3 should be retained.

22 If the city already has rules applicable to the appeal of enforcement actions, the existing process may be incorporated by reference in lieu of the indicated language. The specificity of this provision in terms of time-lines, hearings and decisions are necessary in order to satisfy constitutional principles of due process and equal protection.
applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.

7.1.3 The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.

7.1.4 The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant’s expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.

7.2 The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.