

A GENERAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, AMENDING CHAPTER 28 OF THE CODE OF THE CITY OF NEVADA, MISSOURI BY ADDING SECTION 28-7.2 ADDRESSING SERVICE FOR INDUSTRIAL WASTEWATER PRODUCED OUTSIDE THE CORPORATE LIMITS OF THE CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI THAT:

Section 1. Chapter 28 of the Code of the City of Nevada, Missouri, is hereby amended by addition of Section 28-7.2 as follows:

Section 28-7.2. INDUSTRIAL SERVICE OUTSIDE THE CORPORATE LIMITS OF THE CITY OF NEVADA, MISSOURI.

A. Applicability - Definitions. This section is applicable only to industrial customers producing waste outside the corporate limits of the City of Nevada. As used in this section, the word "Permit" refers to a Permit issued for industrial wastewater discharge under which the City accepts and treats wastewater produced outside the corporate limits of the City of Nevada. Extraterritorial as used in this Section refers to waste generated and users created or located outside the corporate boundaries of the city, i.e. extrajurisdictional situations.

B. Absence of Extraterritorial Service Obligation of the City – City’s Primary Duty. The City of Nevada is not obligated to provide industrial wastewater service for industrial waste produced outside the corporate limits of the City of Nevada, and at all times must observe its primary duty to maintain its wastewater facility operation in compliance with onerous federal and state restrictions and its own ordinances, and to require those having a Permit to respect and obey the laws and regulations applicable to pre-treatment, transmission and treatment and eventual discharge of treated waste effluent into the waters of the nation.

C. Permits under which the City Accepts and Treats Industrial Wastewater Created Outside the Corporate Limits of the City. In addition to permits authorized inside the corporate limits, to promote employment and reasonably utilize and share excess treatment capacity, the Superintendent is authorized to issue Individual Wastewater Discharge Permits to Industrial Users producing waste outside the corporate limits of the city **subject however, to the following special conditions and limitations:**

- (1) **Limitation, Restriction or Termination without cause.** Because the city is not obligated to provide service outside the corporate limits of the city, any permit issued may be limited, restricted or terminated at any

time at or after issuance without notice and without cause, for good reason, for bad reason, or for no reason at all.

(2) **Extraterritorial Permit - Conditional Gratuity.** Any Permit so issued, all provisions of other municipal ordinances or language of the permit notwithstanding, shall constitute a conditional gratuity that does not and will not provide the recipient with a property, contract, or other legal right or cause of action regarding service or conditioning one or more subsequent limitations, restrictions or termination of service or of the Permit itself.

(3) **Extraterritorial/Extrajurisdictional Industrial User Contracts.** No Extraterritorial Permit will be issued unless and until the user has executed an Extraterritorial/Extrajurisdictional Nontransferable, User Contract. The contract must include the following provisions:

- a. The industrial user must agree to be obligated to comply with all pretreatment conditions, requirements, costs and penalties, in the city's sewer use and pretreatment ordinances and future amendments thereto, and this ordinance, Section 28-7.2, as fully as if the industry were located within the city limits.
- b. The user must agree to obtain and comply with all terms of the permit issued by the City and any modifications or amendments thereof.
- c. The user must agree to be subject to the City's enforcement powers including those set forth in the city's pretreatment ordinances. In the event of litigation regarding the same, the industrial user will be assessed and pay all litigation costs associated therewith including attorney fees. In addition, the industry will indemnify the city promptly when billed for all damages, fines and costs, including attorney fees incurred as a result of the industries discharge of industrial waste in the city's system.
- d. The user must agree to allow the city the right to enter the premises of the user at any reasonable time to inspect the entire premises, take samples, and examine and copy records relevant to wastewater composition, production and discharge.
- e. The agreement will include other pertinent provisions including a statement of duration which may be for a brief period or may be for not more than 5 years.

- f. The agreement will note that since the city is not required to provide service, it may terminate, restrict, limit or condition continuation of service at any time without notice or hearing for a good reason, for a bad reason or for no reason at all.

(4) Laws, Rules, Regulations, Ordinances, Charges and Fines.

Any service tendered under the Permit so issued, shall be limited and controlled by the terms and conditions of the Permit, by the terms of the Contract, by the terms of all applicable federal and state laws and regulations, by this ordinance and by all the City's pretreatment ordinances and subsequent amendments thereto, regardless of extraterritorial and extra-jurisdictional applicability and the customer will be subject to all charges and subject to such fines as are permitted by the city's pretreatment ordinances and other applicable common law and statutory provisions.

(5) Term of an extraterritorial permit. Such a permit may be issued for a fixed term of months or years, not to exceed 5 years where a history of responsible operation of the industry has been established) at the discretion of the Superintendent and subject to adjustment at or after issuance by the City Manger.

(6) "Customary Process" – a Gratuity. The City may extend as a gratuity, to the industrial customer the customary process accorded industrial users creating waste inside the corporate limits, but need not. The city is not obligated and cannot to tolerate repeated violations of the city's pretreatment ordinances or creation at the POTW or in city's collection and transmission system either a public nuisance, or a hazard to human health. The gratuitous extension of such courtesies will not entitle an errant industrial customer creating waste outside the corporate limits to any appeal rights or any other cause of action associated with granting or denial of such procedures. Continued discharge of industrial wastewater created outside the corporate boundaries of the city may be terminated, suspended, conditionally continued, or continued only for specified service (e.g. time and volume of discharge) by the Superintendent or the City Manager or by the City Council.

(7) "Customary Process" – Show Cause Hearing. Where it is determined that repeated violations of the city's pretreatment ordinances and/or any amendments thereto have occurred, the Industrial User may, but need not, be permitted to show cause before a hearing officer appointed by the City Manager, prior to the effective date of termination. The sole issue in any such hearing will be whether repeated violations have occurred. Such a hearing may be on the record if costs thereof are paid by the industrial user.

Section 2. This ordinance is adopted to permit the city comply with federal and state law in controlling discharges of waste by Industrial users into the city POTW (Publically Owned Treatment Works). The POTW is required to establish and enforce its pretreatment program as a condition of obtaining its right to discharge into the nation's waters which is granted to it under its NPDES permit. This ordinance shall be in full force and effect from and after its adoption and approval.

PASSED, APPROVED and ADOPTED by the City Council of the City of Nevada, Missouri, this _____ day of _____, 2016.

(SEAL)

Brian L. Leonard, Mayor

Attest:

Johnna Williams, Deputy City Clerk