

AN ORDINANCE ADOPTING, AS DIVISION 4 OF ARTICLE VI OF CHAPTER 25 OF THE FORT SMITH CODE, REGULATIONS FOR THE CONTROL OF FATS, OIL AND GREASE ("FOG") DISCHARGED INTO THE CITY'S WASTEWATER COLLECTION AND TREATMENT SYSTEM ("WCTS")

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

Article VI of Chapter 25 of the Fort Smith Code is hereby amended by adding thereto a Division 4 consisting of the provisions of the following enumerated sections.

DIVISION 4. FATS, OILS AND GREASE (FOG)

Section 25-238. General Provisions

- (a) *Objectives.* This Division sets forth requirements and prohibitions limiting the discharge of Fats, Oils and Grease ("FOG") into the Fort Smith Wastewater Collection and Treatment System ("WCTS"). The objectives of Division 4 provisions are:
- (1) To prevent the introduction of FOG into the WCTS thus preventing blockages and overflows of the WCTS resulting from discharges of FOG that will damage or interfere with the operation of the sewage treatment plants or cause damage to or obstruction of the sewage collection system;
 - (2) To prevent the introduction of FOG into the WCTS that will pass through the WCTS, inadequately treated, into receiving waters or otherwise be incompatible with the WCTS;
 - (3) To protect both WCTS personnel and the general public;
 - (4) To prevent unreasonable maintenance, attention and expense to the WCTS;
 - (5) To enable the City to comply with any Federal or State laws to which the WCTS is subject.
- (b) *Applicability.* This ordinance shall apply to Food Service Establishments (FSEs) and Food Processing Establishments (FPEs) that discharge FOG into the WCTS, except users of the WCTS maintaining a wastewater contribution permit under the City's Pretreatment Program codified as Division 2 of Article VI of Chapter 25 of this Code.
- (c) *Administration.* Except as otherwise provided herein, the City Administrator shall administer, implement, and enforce the provisions of this Division. Any powers granted to or duties imposed upon the City Administrator may be delegated by the City Administrator to a duly authorized City employee. The City Administrator and designated City employee are sometimes referred to as the "Control Authority" in this Division.

(d) *Abbreviations.* The following abbreviations, when used in this Division, shall have the designated meanings:

WCTS	Fort Smith Wastewater Collection and Treatment System
FOG	Fats, Oils, and Greases
FPE	Food Processing Establishment
FSE	Food Service Establishment

(e) *Definitions.* Unless a provision explicitly states otherwise, the following terms and phrases when used in this Division, shall have the meanings hereinafter designated:

- (1) *Architectural or Historical Restrictions.* Physical or legal restrictions limiting an owner's ability to renovate location of a FOG Control Device in a building or structure in the City that is one hundred (100) years or older and has special historical or esthetic interest or value.
- (2) *Extreme Economic Hardship.* A cost to comply with the requirements of this Division that exceeds twenty thousand dollars (\$20,000.00).
- (3) *FOG or Fats, Oils, and Grease.* Fats, oil and grease, whether petroleum-based, mineral-oil-based, animal-based or vegetable-based.
- (4) *FOG Control Device.* Any grease interceptor, grease trap, or other mechanism, device, or process which meets or exceeds the requirements of Section 1003.3 of the 2006 Arkansas Plumbing Code (or subsequent modifications thereof) and that attaches to or is applied to the User's wastewater plumbing fixtures and/or private service line to collect, contain, or remove FOG from the wastewater stream of a FOG Generator prior to discharge into the WCTS.
- (5) *FOG Generator.* Any Food Service Establishment or Food-Processing Establishment that discharges FOG into the WCTS, provided, however, that those establishments covered by the City's industrial user program shall not be considered a FOG Generator for the purpose of this Division.
- (6) *FOG Hauler.* A licensed and permitted company that empties, cleans, and transports waste from FOG Control Devices and is responsible for the proper disposal of the waste.
- (7) *FOG Manifest.* A document that the FOG Hauler must provide to the FOG Generator as proof of services rendered. An identical copy must be maintained by the FOG Generator and FOG Hauler.
- (8) *FOG Wastewater Discharge Permit.* A permit issued by the City, authorizing a FOG Generator to discharge wastewater into City's WCTS.
- (9) *Food Processing Establishment (FPE).* Any non-residential user of the WCTS which manufacturers, processes or packages food for human consumption.

- (10) *Food Service Establishment (FSE)*. Any non-residential user of the WCTS which prepares food for sale or consumption on or off site. Food service establishments include, but are not limited to, food courts; restaurants; catering services; bars/taverns; cafeterias; soda fountains; institutions, both public and private; diners; grocery stores; bakeries; coffee shops; ice cream shops; lounges; hospitals; hotels; nursing homes; churches; schools; daycare center; and all other food service users of the WCTS. A User that is engaged only in reheating or serving of ready-to-eat food products is not considered a FSE.
- (11) *Oil*. Any petroleum-based product.
- (12) *Grease Recycling Container*. A container, with a lid, located outside a food service facility for the specific purpose of collecting liquid cooking grease from deep fryers, woks and other cooking containers, and from the cleaning of griddles and other cooking fixtures. Grease collected in oil/grease dumpsters can be recycled and/or re-processed.
- (13) *Remodeling or Remodeled*. A physical change or operational change in a structure that requires an issuance of or revision to a business license or a building permit.
- (14) *Twenty-Five (25) Percent Rule*. The requirement for a FOG Control Device to be maintained such that the combined FOG solids accumulation does not exceed twenty-five (25) percent of the design hydraulic capacity of the FOG Control Device.
- (15) *User*. Any person or entity which contributes, or causes or permits the contribution, of wastewater into the City's WCTS.

Section 25-239. General Sewer Use Requirements

- (a) *Prohibited Discharge Standards*. Both FOG Generators and all other Users of the WCTS are subject to the provisions of Fort Smith Code Section 25-207(a). For the purposes of this Division, any reference to the Publicly Owned Treatment Works (POTW) in Section 25-207(a) shall be deemed a reference to the WCTS.
 - (1) The direct or indirect introduction of additives into the FOG Control Device is prohibited. Additives include but are not limited to biological agents such as enzymes, bacteria, and/or degreasing agents.
 - (2) No liquid or grease that is removed from a FOG Control Device shall be discharged to the WCTS as otherwise prohibited in these regulations. This includes actions taken during maintenance of FOG Control Devices and FOG Haulers.
- (b) *Questionnaires*. When requested in writing by the Control Authority, all non-residential Users must submit information on the nature and characteristics of their wastewater within thirty (30) days of the date of the request. The Control Authority is authorized to prepare a form for this purpose and may periodically require non-residential Users to update this information
- (c) *Right of Revision*. The City reserves the right to establish by ordinance or in a FOG Wastewater Discharge Permit more stringent standards or requirements on discharges to the WCTS.

- (d) *Dilution.* No FOG Generator shall ever increase the use of process water or in any other manner attempt to dilute a discharge as a partial or complete substitute for adequate FOG handling.

Section 25-240. FOG Wastewater Discharge Permit Required

- (a) No FOG Generator shall discharge wastewater into the WCTS without first obtaining a FOG Wastewater Discharge Permit ("Permit") from the Control Authority, provided any existing FOG Generator may continue to discharge for the time periods specified herein for timely application for and obtaining issuance of the Permit. No Permit shall be issued to a FOG Generator without provision for the installation, operation and maintenance by the FOG Generator of a FOG Control Device.
- (b) The Control Authority may issue a FOG Wastewater Discharge Permit to any other user as necessary to carry out the purposes of this Division.
- (c) Any violation of the terms and conditions of a FOG Wastewater Discharge Permit shall be deemed a violation of this Division and subjects the wastewater discharge permittee to the sanctions set out in §25-247 through §25-248 of this Division. Obtaining a FOG Wastewater Discharge Permit does not relieve a User of any obligation to comply with all federal and state standards or requirements or with any other requirements of federal, state, and local law.

Section 25-241. FOG Wastewater Discharge Permit Procedures

- (a) *Existing Connections.* All FOG Generators operating from facilities currently connected to the WCTS shall, within ninety (90) days of the Effective Date of the ordinance codified as this Division ("Effective Date"), apply to the Control Authority for a FOG Wastewater Discharge Permit ("Permit") and shall not cause or allow discharges to the WCTS after one hundred eighty (180) days of the Effective Date except in accordance with a Permit issued by the Control Authority. Prior to issuance of a Permit, all FOG Generators shall repair or replace any noncompliant plumbing including any existing FOG Control Device within ninety (90) days of written notification by the Control Authority if any one or more of the following conditions exist or occur:
 - (1) The User's facility does not have a FOG Control Device;
 - (2) The User's facility has a defective FOG Control Device; or,
 - (3) Remodeling of the User's food preparation or kitchen waste plumbing system is performed which requires a plumbing permit to be issued by the City.
- (b) *New Connections.* Any FOG Generator which begins operation subsequent to the Effective Date, whether from an existing or subsequently remodeled or constructed facility, shall apply for and obtain issuance of a Permit prior to beginning or recommencing discharge into the WCTS.
- (c) *FOG Wastewater Discharge Permit application.*
 - (1) The Control Authority may require FOG Generators to submit all or some of the following information as part of a Permit application:
 - a. Identifying Information.

- i. The name and address of the discharging facility, and the names of all principals and owners of the FOG Generator.
 - ii. If the FOG Generator is the lessee of the discharging property, the name and address of the property owner and the property manager for the property where the FOG Generator is located.
 - iii. Contact information for day-to-day contact, description of activities, facilities, and processes of the FOG Generator.
- b. Description of Operations.
- i. A comprehensive description of the FOG Generator; its operation, cuisine and service activities.
 - ii. Comprehensive site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, chemical storage areas, and FOG Control Devices by size, location, and elevation, and all points of discharge. A qualified professional must certify to the accuracy of these submittals for new construction. For existing facilities, the FOG Generator may provide a schematic drawing and permit access for inspection by the Control Authority.
 - iii. NAICS codes [defined by Fort Smith Code Section 25-206(d){35}] of all processes being conducted at the facility, if applicable.
 - iv. Number of employees, hours of operation, and proposed or actual hours of operation.
 - v. Seating capacity and table turnover rates, if applicable.
 - vi. Type and amount of raw materials processed (average and maximum per day).
- c. The location for monitoring all FOG Control Devices covered by the Permit;
- d. Pollution Prevention activities such as source reduction, waste minimization, environmental management systems, best management practices, and water and energy conservation.
- e. Any other information as requested by the Control Authority to evaluate the Permit application.

(2) Incomplete or inaccurate applications may not be processed and may be returned to the FOG Generator for revision.

(d) *Application Signatories and Certification.*

- (1) All Permit applications must be signed by an authorized signatory of the FOG Generator and contain the following certification statement:

"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 gather and evaluate the information submitted. 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 there are significant penalties for submitted false information, including the possibility of fine and imprisonment for knowing violations."

- (e) *FOG Wastewater Discharge Permit decisions.* The Control Authority will evaluate the data furnished by the FOG Generator and may require submission of additional information. Within ninety (90) days of receipt of a complete Permit application, the Control Authority will determine whether to issue or deny issuance of the Permit.

Section 25-242. - FOG Wastewater Discharge Permit Administration

- (a) *Permit Duration.* Permits shall be issued for a specified time period, not to exceed two (2) years from the effective date of the permit. A Permit may be issued for a period less than two (2) years, at the discretion of the Control Authority. Each Permit will indicate a specific date upon which it will expire.
- (b) *Permit Contents.* Permits shall include such conditions as are deemed reasonably necessary by the Control Authority to achieve the objectives stated in Section 25-238(a). A Permit must contain:
 - (1) A statement of issuance date, effective date and expiration date;
 - (2) A statement that the FOG Wastewater Discharge Permit is nontransferable;
 - (3) Requirements for the FOG Generator to construct, operate and maintain, at its own expense, FOG Control Device(s) including sampling facility(ies);
 - (4) Limits on discharge of FOG in excess of one hundred (100) mg/L in any wastewater discharge to the WCTS;
 - (5) Self-monitoring and record-keeping requirements;
 - (6) Requirements for FOG Control Device maintenance frequency and schedule;
 - (7) Requirements for implementation, maintaining and reporting of best management practices;
 - (8) Requirements for maintaining and retaining logs and records, including waste hauling records and waste manifests;
 - (9) Other conditions as deemed appropriate by the Control Authority to ensure compliance with this Division, and State and Federal laws, rules, and regulations; and,

- (10) A statement that compliance with the Permit does not relieve the permittee of responsibility for compliance with all applicable federal and state standards, including those which become effective during the term of the Permit.
- (c) *FOG Wastewater Discharge Permit Appeals.* A permittee may petition the Control Authority to reconsider a decision to not issue or the terms of an issued Permit within thirty (30) days of decision to not issue or of notice of issuance of the discharge permit.
- (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
 - (2) In its petition regarding terms, the appealing party must indicate the Permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the Permit.
 - (3) Unless the Control Authority provides otherwise in writing, the effectiveness of an issued Permit shall not be stayed pending the appeal.
 - (4) If the Control Authority fails to act within thirty (30) days, the request for reconsideration shall be deemed to be denied. Control Authority decisions not to reconsider a Permit, not to issue a Permit, or not to modify a Permit shall be considered final administrative actions for purposes of judicial review.
- (d) *FOG Wastewater Discharge Permit Modification.* The Control Authority may modify a Permit for good cause including, but not limited to, the following reasons:
- a. To incorporate any new or revised federal, state, or local standards or requirements;
 - b. To address significant alterations or additions to the FOG Generator's operation, processes, or wastewater volume or character since the time of Permit issuance;
 - c. Violation of any terms or conditions of the Permit;
 - d. Misrepresentations or failure to fully disclose all relevant facts in the Permit application; or,
 - e. To correct typographical or other errors in the Permit;
- (e) *FOG Wastewater Discharge Permit Transfer.*
- (1) A Permit issued under this Division is for a specific FOG Generator and for a specific operation and creates no vested rights.
 - (2) No permit holder shall assign, transfer, or sell any Permit issued under this Division nor use any such permit for any premises, facilities or operations or discharges not expressly encompassed within the underlying permit.
- (f) *FOG Wastewater Discharge Permit Revocation.* The Control Authority may revoke a Permit for good cause, including, but not limited to, the following reasons:
- (1) Failure to notify the Control Authority of significant changes to the wastewater prior to the changed discharge;

- (2) Failure to provide prior notification to the Control Authority of changed conditions pursuant to §25-243 through §25-246 of this Division;
 - (3) Misrepresentation or failure to fully disclose all relevant facts in the FOG Wastewater Discharge Permit application;
 - (4) Tampering with a required Fog Control Device or Control Authority monitoring equipment;
 - (5) Refusing to allow the Control Authority timely access to the facility premises and records;
 - (6) Failure to pay fines;
 - (7) Failure to pay sewer charges;
 - (8) Failure to meet Permit compliance schedules;
 - (9) Failure to timely complete a Questionnaire [Section 25-239(b)] or timely submit a Permit application; or,
 - (10) Violation of any terms of the Permit or this Division.
- (g) *Application for Re-Issuance.* A FOG Generator with an expiring FOG Wastewater Discharge Permit shall apply for Permit re-issuance by submitting a complete Permit application, in accordance with §25-240, a minimum of ninety (90) days prior to the expiration of the FOG Generator's existing Permit.

Section 25-243. FOG Control Devices

- (a) *FOG Control Devices.* All FOG Control Devices necessary for compliance with this Division and the FOG Wastewater Discharge Permit shall be installed, operated, and maintained at the FOG Generator's expense.
- (b) *FOG Control Device Sizing.* Plans for installation of all FOG Control Devices shall be submitted to and subject to approval by the Control Authority. Generally, the Control Authority shall be guided by the PDI G101, ASME A1 12.14.3 Appendix A or ASME A1 12.14.4.
- (c) *Grease Recycling Container.* Unless the Control Authority approves alternative procedures, a grease recycling container must be provided and routinely serviced by a licensed grease retrieval service when a FOG Generator's facility has a fryer, grill, or other cooking process that produces waste grease. It is a violation of this Division to dispose of waste cooking grease by direct or indirect connection to the WCTS, and waste cooking grease may not be dumped directly into a FOG Control Device.
- (d) *Existing Facilities.* An existing FOG Generator in operation on the Effective Date which does not have a FOG Control Device is required to install a FOG Control Device, at the FOG Generator's expense, within one year of the Effective Date.
- (e) *Repair.* If any FOG Control Device is found to be non-compliant with any Division or Permit standard or inadequate to prevent FOG discharges to the WCTS in excess of concentrations of 100 mg/L, the FOG Generator, at the FOG Generator's expense, shall repair or replace any

noncompliant plumbing or the existing FOG Control Device within ninety (90) days of written notification by the Control Authority.

- (f) *Historic and extreme hardship restrictions.* A FOG Generator operating in a structure subject to architectural or historical restrictions or who will suffer Extreme Economic Hardship in order to upgrade an existing FOG Control Device may keep the current FOG Control Device in place provided that all fresh air fixtures are tied into the current FOG Control Device, or install a FOG Control Device approved by the Control Authority. In the event of remodeling or if the FOG Generator changes ownership, a FOG Control Device that complies with all applicable requirements of this Division shall be installed.
- (g) *Sampling.* All FOG Control Devices shall have a sampling point on the effluent discharge side of the FOG Control Device to allow for observation, sampling, and measurement of wastewaters. The FOG Wastewater Discharge Permit shall identify the sampling point location. The sampling point shall be maintained and kept safe and accessible to the Control Authority at all reasonable times.
- (h) *FOG Control Device inspection.* Not less frequently than once per permit cycle (once every two (2) years), each FOG Generator shall have a licensed plumber or other qualified professional approved by the Control Authority inspect each FOG Control Device. After evacuation of the FOG Control Device, the licensed plumber or other qualified professional approved by the Control Authority shall provide a written report of the inspection to the FOG Generator and certify the FOG Control Device is operating properly. All defects found during the inspection shall be corrected by each FOG Generator within ninety (90) days of each inspection.
- (i) *Notification of spills by the FOG Generator:*
 - (1) In the event that any FOG Generator is unable to comply with any Permit condition due to a breakdown of equipment, accidents, human error, or the FOG Generator has reasonable opportunity to know that his/her/its discharge shall exceed the discharge provisions of the FOG Wastewater Discharge Permit or the regulations in this Division, the FOG Generator shall immediately notify the Control Authority by telephone at the number specified in the Permit. If the material discharged to the sewer has the potential to cause or result in sewer blockages or sanitary sewer overflows, the FOG Generator shall immediately notify the Control Authority by telephone at the number specified in the Permit.
 - (2) All FOG Generators shall provide written notification of this oral or telephonic notification to the Control Authority at the address specified in the Permit no later than five (5) working days from the date of the incident. The written notification shall state the date of the incident, the reasons for the discharge or spill, what steps were taken to correct the problem, and what steps are being taken to prevent the problem from recurring.
 - (3) Such notification shall not relieve a FOG Generator of any expense, loss, damage, or other liability which may be incurred as a result of damage or loss to the City or any other damage or loss to person or property; nor will such notification relieve a FOG Generator from payment of any fees or imposition of any other liability which may be authorized by this Division or other applicable law.

Section 25-244. Hauler and Manifest

- (a) Any person or entity owning or operating vacuum or "FOG Hauler" pump trucks, or other liquid transport trucks, who wishes to operate inside the City to remove and perform maintenance on FOG Control Devices, shall first obtain from the Control Authority a FOG Hauler Permit. All applicants for the FOG Hauler Permit shall complete the application form, pay the appropriate permit fee, receive a copy of this Division governing removal and cleaning of FOG Control Devices, and shall agree, in writing, to abide by this Division and all other applicable environmental regulations.
- (b) The FOG Hauler must maintain a daily log and record of operations, which may include, but is not limited to: the date and time of the pumping event; name and FOG Wastewater Discharge Permit number of business requesting service; name, physical address, and phone number of the FOG Generator representative; type of facility; estimated or measured volume of waste collected; name of the driver; date and time the FOG waste was properly disposed; ultimate disposal location; name, physical address, and phone number of the representative operating the ultimate disposal location; and discharge ticket number.
- (c) At the end of each quarter (March, June, September and December), copies of such log shall be forwarded to the Control Authority by the 15th day of the following month (April, July, October and January).
- (d) *Cleanup of leak and spills.*
 - (1) In the event a discharge or spill of waste during collection or transport, the FOG Hauler shall take appropriate action to protect human health and the environment. Appropriate action may include notifying local law enforcement and health officials, build an embankment around the discharge area, cleaning up the spill or discharge materials or other action as may be required or approved by federal, state, and local officials having jurisdiction so that the waste no longer presents a public health or environmental problem.
 - a. Spills shall be prevented from entering any water supply or water way, including storm sewers.
 - b. Spills that enter a water way or otherwise contaminate water way or water supply shall be reported to the appropriate state and local officials.
 - (2) If a spill, splash, spray, or leak occurs during collection, transport or discharge, the FOG Hauler shall clean and properly dispose the spilled, splashed, sprayed, or leaked waste at his expense.
 - (3) Where a spill, splash, spray, or leak occurred during transport or discharge, the owner shall make necessary repairs or modifications to the vehicle prior to subsequent operation of the vehicle.
- (e) *Transported waste disposal records requirements.*
 - (1) Records shall be maintained for each individual collection and disposal. Such records shall be maintained using a waste hauler manifest form issued by the Control Authority upon written request by the FOG Hauler.

- (2) The waste manifest forms shall consist of five copies which shall be used to document the receipt, transportation, and disposal of applicable waste.
- (3) The first section of the manifest shall be completed at the time of collection and before the vehicle is moved from the generator's property. The remainder of the manifest shall be completed at the time of transfer or disposal as appropriate.
 - a. The manifest form shall be signed by the FOG Generator at the time of waste collection.
 - b. The manifest form shall be signed by the FOG Hauler at the time of waste collection.
- (4) The copies of the manifest forms shall be distributed as follows:
 - a. The fifth copy with the FOG Generator information and FOG Hauler information and signatures completed shall be given to the FOG Generator at the time of waste collection.
 - b. The fourth copy with all information and signatures completed shall be given to the disposal site at the time of disposal.
 - c. The third copy with all information and signatures completed shall be retained by the FOG Hauler at the time of disposal.
 - d. The second copy with all information and signatures completed shall be given to the FOG Generator after ultimate disposal of the FOG waste.
 - e. The original copy with all information and signatures completed shall be given to the Control Authority.
- (5) All copies of the manifest form shall be retained by the respective recipients for a minimum of three (3) years and shall be made available to the Control Authority, state, and EPA upon request or demand for inspection and /or copying. This period shall be automatically extended for duration of any litigation concerning the FOG Generator, FOG Hauler, or Control Authority, or where any involved party has been specifically notified by the Control Authority of a longer retention period.

Section 25-245. Reporting Requirements

- (a) *Notification of planned changes.* All FOG Generators shall notify the Control Authority of any significant planned changes to the FOG Generator's operations or system which might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change including, but not limited to, facility expansion/remodeling or process modifications that may result in new or substantially increased FOG discharges or a change in the nature of the discharge. All FOG Generators shall submit any information requested by the Control Authority for evaluation of the effect of such expansion on the FOG Generator's FOG discharge to the WCTS.
- (b) *Required FOG Control Device records.* All FOG Generators shall maintain records which shall be kept on site and made available on demand by the Control Authority during inspection. Records shall include but are not limited to:

- (1) A record of best management practices being utilized, including employee training;
- (2) Records of scheduled visual inspections conducted by the authorized representative of the FOG Generator, which shall include the date and time of the visual inspections, any observed abnormalities, and the signature of the person that performed the visual inspection;
- (3) A logbook of FOG Control Device cleaning and maintenance;
- (4) Records of required inspections by a certified plumber of the FOG Control Device;
- (5) A record of any spills and/or cleaning of the lateral sewer line; and,
- (6) Copies of FOG Control Device manifests of the transportation and disposal of FOG Control Device contents, if applicable.

Section 25-246. Control Authority Compliance Monitoring

(a) *Inspections and authority to enforce regulations.*

- (1) Right of Entry: Inspection and Sampling. The Control Authority shall have the right to enter the premises of any FOG Generator to determine whether the FOG Generator is complying with all requirements of this Division, any FOG Wastewater Discharge Permit or order issued by the Control Authority. FOG Generators shall allow the Control Authority reasonable access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties. In the event of an emergency involving actual or imminent sanitary sewer overflow, the Control Authority may access adjoining businesses or properties that share a WCTS connection with a FOG Generator in order to prevent or remediate an actual or imminent sewer overflow.
- (2) The Control Authority shall inspect FOG Generators on both an unscheduled and unannounced basis or on a scheduled basis. Inspection of a FOG Control Device may be performed at frequencies necessary to protect the WCTS against the accumulation of FOG in an amount that would exceed the twenty-five (25) percent rule, but at a minimum of once every two (2) years. Inspection shall include all fixtures, equipment, food processing, and storage areas, and shall include a review of the processes that produce wastewater discharged from a facility through the FOG Control Device. Any deficiencies may be noted, including but not to be limited to:
 - a. Failure to report changes in operations or wastewater constituents and characteristics;
 - b. Failure to properly maintain the FOG Control Device;
 - c. Failure to maintain logs, files, records, or access for inspection or monitoring activities;
 - d. Failure to obtain or renew the FOG Wastewater Discharge Permit in a timely manner; or,

- e. Any other violations of the regulations of this Division or state law that may require correction by the FOG Generator.
- (b) *Search Warrants.* If the Control Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Division, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Division, any Permit or an order issued by the Control Authority, or to protect the overall public health, safety and welfare of the community, the Control Authority may seek issuance of a search warrant from the District Court of Sebastian County, Arkansas, Fort Smith Division.

Section 25-246. Administrative Enforcement Remedies

- (a) *Notification of Violation.* When the Control Authority finds that a FOG Generator has violated, or continues to violate, any provision of this Division, an individual FOG Wastewater Discharge Permit, or an order issued by the Control Authority, the Control Authority may serve upon that FOG Generator a written Notice of Violation. Within five (5) business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the FOG Generator to the Control Authority. Submission of such a plan in no way relieves the FOG Generator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.
- (b) *Procedures and Enforcement Remedies.* A Notice of Violation shall be subject to the procedures, possible enforcement remedies and affirmative defenses provided in Fort Smith Code Section 25-216(b) through Section 25-218. Any reference to Publically Owned Treatment Works (POTW) in Sections 25-216(b) through 25-218 shall be deemed a reference to the WCTS.
- (c) *Damage to facilities or interruption of normal operations of the POTW.* Any person who discharges any waste which causes or contributes to any sewer blockage, sanitary sewer overflows, obstruction, interference, damage, or any other impairment to the City's WCTS and/or equipment, or to the operation of those facilities and/or equipment shall be liable for all costs required to clean and/or repair the facilities and/or equipment, together with expenses incurred by the City to resume normal operations. A service charge of fifteen (15) percent of the City's costs shall be added to the costs and charges to reimburse the City for miscellaneous overhead, including administrative personnel and recordkeeping. The total amount shall be payable within forty five (45) days of invoicing by the City.

Section 25-247. Miscellaneous Provisions

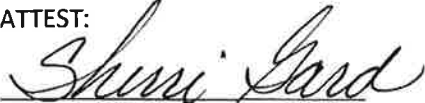
- (a) *FOG Control Program Charges and Fees.* The Control Authority reserves the right to adopt fees for reimbursement of costs of setting up and operating the City's FOG Control Program.
- (b) *Effective date.* This Ordinance adopting Division 4 of Article VI of Chapter 25 of the Fort Smith Code shall be effective on January 1, 2017.

(c) *Severability*. If any provision of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected and shall continue in full force and effect.

This Ordinance adopted this 20th day of December, 2016.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:


Publish 1 Time