

Adopted by City Council 10-22-07

**AN ORDINANCE REGULATING LAND DISTURBANCE ACTIVITY RELATED TO GRADING AND/OR EROSION AND SEDIMENT DISCHARGES INTO THE STORM WATER DRAINAGE SYSTEM OF THE CITY OF SHAWNEE, KANSAS**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS.

SECTION ONE:

The Shawnee Municipal Code is hereby amended to add a new Chapter 11.20 to be titled "Land Disturbance Activity" and is to read as follows:

**LAND DISTURBANCE ACTIVITY**

Sections

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11.20.010 Purpose

The Congress of the United States has amended the Clean Water Act of 1972 to reduce Pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter "NPDES") requirements to regulate stormwater and urban runoff discharge from Land Disturbance and Construction activities, into the City's Stormwater Drainage Systems; and,

The City of Shawnee is subject to the NPDES requirements of federal law as an operator of a Small Municipal Separate Storm Sewer System, and the City is therefore obligated by federal law to develop, implement, and enforce minimum Erosion and Sediment control standards in compliance with the City's Kansas Water Pollution Control General MS4 Permit.

The purpose of this Chapter is to implement and provide for enforcement of a program to regulate Land Disturbance and Construction activities related to grading and to control Erosion and Sediment resulting from these activities.

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**11.20.020 Definitions**

As used in this Chapter, unless from the context a different meaning is intended, or the Code directs that a different definition is to be applied to a provision, the terms or phrases used herein shall have those meanings and definitions as set forth in Chapter 11.04 of this Code.

**11.20.030 Land Disturbance Activity**

- A. No Person shall authorize or maintain a Land Disturbance activity or Construction Site that fails to comply with the Shawnee Design Manual and the requirements of this Chapter.
- B. No Person shall authorize or maintain a Land Disturbance activity or a Site of Construction that fails to provide and implement Erosion and Sediment Control Best Management Practices to the Maximum Extent Practicable to prevent the discharge of Sediment, Construction materials, concrete truck washout, fuel or other Pollutants beyond the project Construction limits, adjacent staging, storage or parking areas and/or property boundaries or into the City's Stormwater Drainage System, rights-of-way, drainage easements, alleys, or other property of the City.
- C. No Person shall authorize or maintain a Land Disturbance activity or Site of Construction without a Land Disturbance Permit and/or a Site - specific Erosion and Sediment Control Plan approved by the Director prior to any Construction or Land Disturbance activity as required by this Chapter.
- D. No Person shall fail to immediately take all action necessary to completely abate any violation of this Chapter including but not limited to the establishment or restoration of Erosion and Sediment Control BMP's as required by this Chapter and remedial action to clean and/or remove Sediment and other Pollutants in violation of Title 11.

**11.20.040 Land Disturbance Permit**

The issuance and approval of a Land Disturbance Permit is subject to and contingent upon compliance with this Chapter and all other City permits, Shawnee Municipal Code, other City Regulations and other requirements specific to the Development during the duration of the Land Disturbance, and such Land Disturbance Permit may be revoked or withdrawn upon a failure to comply with this Chapter. The failure to comply with the

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requirements stated in this Chapter shall be unlawful and shall constitute a violation of this Chapter. No Person shall authorize or maintain a Land Disturbance activity without first obtaining any Land Disturbance Permit required by this Chapter. The Landowner of the land upon which a Land Disturbance activity takes place, shall be the Person responsible for obtaining any required Land Disturbance Permit except for work conducted in the Right-of-Way or Utility Easements. The Person or Construction Site Operator conducting Land Disturbance activities in the Right-of-Way or in a Utility Easement shall be responsible for obtaining any required Land Disturbance Permit.

- A. A Land Disturbance Permit is required for the following Land Disturbance activities (specific requirements may vary as per the Shawnee Design Manual):
1. The cumulative disturbance of an area greater than or equal to one (1) acre, or
  2. The disturbance of any part of a larger common plan of Development or sale that, when completed, will disturb a cumulative area of greater than or equal to one (1) acre, or
  3. Any disturbance that will include more than fifty (50) cubic yards of fill or cut, or
  4. Any disturbance that occurs in or within fifty (50) feet of a natural or improved Channel or drainage way, or
  5. Any disturbance that involves building Construction of new roofed structures of more than one-thousand (1000) square feet on a Site with less than one (1) acre of Land Disturbance.
- B. A Land Disturbance Permit is not required for the following:
1. Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property.
  2. Agricultural uses with the exception that if the Director determines that Erosion and Sediment controls are needed then the following standards or permits may be required to be implemented and maintained:
    - (a) United States Department of Agriculture Natural Resources Conservation Service Erosion and Sediment Control Standards or
    - (b) Land Disturbance Permit may be required.
- C. A Land Disturbance Permit application shall include, but is not limited to the following minimum submittal requirements:
1. A Site -specific Erosion and Sediment Control Plan that complies

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with this Chapter and the Shawnee Design Manual.

2. A Site specific grading plan that complies with this Chapter and the Shawnee Municipal Code, including Chapter 15.04, the Shawnee Design Manual, and other applicable Shawnee Policies and Administrative Statements.
  3. A Stormwater Pollution Prevention Plan (SWPPP) that complies with this Chapter and the Shawnee Design Manual. The SWPPP must be in compliance with the State of Kansas KDHE General Permit for NPDES Stormwater Runoff from Construction Activities.
  4. Contact information for the Applicant, Construction Site Operator, project owner, Qualified Erosion Control Specialist, and Inspector.
  5. Area to be disturbed.
  6. Duration of Land Disturbance.
  7. Security as required by this Chapter.
  8. Permit Fee as authorized by this Chapter.
- D. The Construction Site Operators required to be identified in the application shall be trained in Erosion and Sediment control practices, shall maintain a copy of the SWPPP on the project Site and shall comply with all the requirements of the LDP.
- E. The Land Disturbance activity described in the Land Disturbance Permit application shall be commenced within the time limits defined on the application. The Land Disturbance activity described and authorized in the Land Disturbance Permit application shall adhere to the schedule defined in the Land Disturbance Permit application or be subject to additional fees defined in this Chapter.
- F. The Land Disturbance Permit application, Erosion and Sediment Control plans and all other LDP requirements shall be prepared under the supervision of and sealed by a Professional Engineer or Landscape Architect licensed in the state of Kansas who has received a minimum of eight (8) hours classroom instruction in Sediment and Erosion control taught by a Qualified Erosion Control Specialist.
- G. A Qualified Erosion Control Specialist shall be authorized by the Permit Holder of the Land Disturbance Permit and identified on the Land Disturbance application as the Person responsible to manage and ensure that all work is in compliance with the SWPPP and all requirements of the Land Disturbance Permit approved by the City.
- H. A Land Disturbance Permit not being required for a Site does not

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exempt a Site from following the basic Erosion control practices defined in the Shawnee Design Manual.

- I. If the Land Disturbance activity threatens or impedes the ability of the City to meet its own permit requirements under the NPDES Stormwater Discharge Permit the Director may require any Person to obtain a Land Disturbance Permit in full compliance with this Chapter.
- J. Every permit shall expire based on the time limits defined in the application.
- K. No Person required by this Chapter to obtain a Land Disturbance Permit shall authorize or maintain a Land Disturbance activity or a Site of Construction, which is not maintained at all times, in compliance with the Site -specific Erosion and Sediment Control Plan approved by the Director.
- L. No Person shall permit, authorize or maintain a Land Disturbance activity or a Construction activity until all Erosion and Sediment control measures identified in this Chapter have been installed, inspected, and approved in accordance with this Chapter.
- M. No Person required by this Chapter to obtain a Land Disturbance Permit shall fail to obtain a satisfactory final inspection and City approval of the full Site restoration in compliance with all requirements of this Chapter, prior to the expiration of the Land Disturbance Permit.

**11.20.050 Land Disturbance Permit Inspections**

- A. Maintenance of Control Measures. All required Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times.
- B. Routine Inspection. It shall be the duty of the Permit Holder to provide routine inspections of the Construction Site and maintain effective Erosion and Sediment Control measures. Routine inspections shall be performed once per week, more frequently if required on the Plan, and within twenty-four (24) hours following each rainfall event of half an inch (1/2") or more within any twenty-four hour period. A log shall be kept of these inspections by the Qualified Erosion Control Specialist as a part of the SWPPP. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency
- C. The LDP application shall designate the Qualified Erosion Control Specialist who shall provide the routine inspections required by this Section and/or designate a qualified inspector. The designation shall

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be made, in writing, to the Director at the time the Land Disturbance Permit application is submitted for approval. The Qualified Erosion Control Specialist and or their assigned Inspector that performs the Routine Inspections shall maintain a copy of the most current Erosion and Sediment Control Plan at the Construction Site at all times. The Inspection shall be done under the supervision of the Qualified Erosion Control Specialist. The written reports shall be submitted by the Qualified Erosion Control Specialist to City as required by and in compliance with the Shawnee Design Manual. The City shall not be designated as an inspector.

- D. Initial Inspection. The Permit Holder shall notify the Director when initial Erosion and Sediment Control measures are installed in accordance with the Erosion and Sediment Control Plan. No Land Disturbance activities shall begin prior to written approval by the Director of the certification, by the Qualified Erosion Control Specialist, that all pre-Construction Erosion and Sediment Control measures are correctly installed per the Approved Plan.
- E. A Land Disturbance Permit shall not be closed until a final inspection and approval of the site stabilization is issued by the City. No final certificate of occupancy shall be issued until a Site is stabilized, restored and the Land Disturbance Permit's requirements have been satisfied and the permit closed. A Site shall be considered stabilized and restored when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover seventy percent (70%) of the Upstream Tributary Area found within the area defined by the Land Disturbance Permit and as required by the Director. All portions of the Site using Perennial Vegetation for ground stabilization shall be homogeneously covered with at least a seventy percent (70%) vegetation density. Restoration includes the removal of all non-permanent Erosion and Sediment Control devices for the Site. Final Certification of the Restoration and Stabilization of the Site shall be submitted for approval to the Director by the Qualified Erosion Control Specialist.
- F. A Land Disturbance Permit acknowledges and conveys to the Director the right to enter upon property described in the Land Disturbance Permit, as necessary to enforce and carryout the provisions of this Chapter.

11.20.060 For Land Disturbances Of Less Than One Acre

- A. Land Disturbances less than one (1) acre that are not covered by a LDP and require a building permit or work in the right-of-way permit will require an Erosion and Sediment Control Plan to be submitted in

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compliance with the Shawnee Design Manual.

- B. Franchised and/or Public Utilities shall obtain a General Land Disturbance Permit for Land Disturbances of less than one (1) acre in-lieu of obtaining individual project Land Disturbance Permit. The General Land Disturbance Permits for franchised and public utilities will be renewed annually and shall include the effective erosion control standards and construction methods that are to be implemented on the utility's projects, conforming to the Shawnee Design Manual.. The Fee and performance surety for a General Land Disturbance Permit will be as shown in the latest *City of Shawnee Policy Statement*.

11.20.070 Fees

- A. Prior to the issuance of Land Disturbance Permit each Applicant shall pay to the City a fee as established by the Governing Body in the most current Policy Statement PS-27, as amended. Fees paid for a Land Disturbance Permit, which is subsequently revoked by the Director, are not refundable. A Person operating in compliance with the regulations of this Chapter shall not be charged a permit fee when obtaining a Land Disturbance Permit for Construction or re-Construction of City owned and financed capital improvement projects.
- B. Any Person who permits, authorizes, or maintains a Land Disturbance activity without first obtaining a valid Land Disturbance Permit required by this Chapter, shall pay additional permit fees as indicated in the latest *City of Shawnee Policy Statement Code*.
- C. The Applicant shall establish and maintain throughout the permit period an escrow account, issue a letter of credit, or a surety bond in the City's name, as a sufficient surety for the City to requirements of this Chapter. The Director may determine that a specific type of surety instrument be required of an Applicant based on the project proposed and past performance of the Applicant. The amount of the required surety shall be as defined in the latest *City of Shawnee Policy Statement*. The amount of the letter of credit or escrow account may be reduced with the approval, in writing, of the Director by amending the letter of credit or escrow account.

11.20.080 Additional Persons Responsible for Compliance

The Person responsible for compliance with this Chapter shall include, jointly and severally:

- A. The Landowner and/or occupant of the property upon which a Land

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Disturbance or Construction activity takes place. When a Land Disturbance Permit and/or Site Development Permit issued, the Landowner is responsible for Land Disturbance activities from permit issuance to closure, unless the City approves a transfer of responsibility to a new Landowner when land is sold.

- B. The Person who submits or to whom a Land Disturbance Permit is issued that relates to the property upon which a Land Disturbance activity or Construction activity takes place.
- C. The Person who submits, or requests a waiver of, the Site specific Erosion and Sediment Control Plan that relates to the property upon which a Land Disturbance activity or Construction activity takes place.
- D. Any Person, who engages in, permits, manages, or participates in a Land Disturbance activity or Construction activity.
- E. Construction Site Operators.

**11.20.090 Compliance and Use**

The property described in a Land Disturbance Permit shall be maintained at all times in compliance with all provisions of the *Shawnee Municipal Code*, state and federal laws, Shawnee Design Manual, applicable laws or regulations, the conditions or requirements for approval of a Site plan, plat, or special use permit, including required drainage, grade or elevation plans. The property described in a Land Disturbance Permit shall be maintained at all times in compliance with the provisions of any application, plans or specifications upon which such permit was issued.

The approval of the Erosion and Sediment Control Plan and the Stormwater Pollution Prevention Plan (SWPPP) is contingent upon compliance with the requirements stated in this Chapter, and shall comply with the Shawnee Design Manual to the Maximum Extent Practicable in order to prevent the escape of Sediment and other Pollutants from the Site.

The failure to comply with the requirements stated in this Chapter shall be unlawful and shall constitute a violation of this Chapter.

The provisions of this Chapter shall be in effect on January 1, 2008. A LDP shall not be required for any Land Disturbance activities that have a valid City permit issued prior to January 1, 2008.

11.20.100 Enforcement of Code Provisions

Any Person, that fails to provide and implement Erosion and Sediment Control Best Management Practices to the Maximum Extent Practicable as required by this Chapter, shall be ordered by the Director, to take remedial action on said land to prevent the occurrence or recurrence of a violation of this Chapter. Remedial action shall include, but not be limited to, conformance to the requirements of this Chapter. When failed or absent Erosion control has resulted in mud, silt, gravel, dust or other debris entering into the public rights of way, drainage Easements, alleys, or other property of the City, the remedial action required also shall include the restoration of the area disturbed to a neat and presentable condition and removal of any debris or other Pollutants.

Whenever the Director, finds a violation of this Chapter, the Director shall order the Landowner of the land upon which a Land Disturbance activity takes place, the Construction Site Operator, and/or the Permit Holder to take action within three (3) days after service of such order to comply with the provisions of this Chapter. The order may direct the removal of any dirt, debris or mud that has been deposited in the rights of way, drainage easements, alleys, or other properties owned by the City, within four (4) hours after service of such notice. Notice may be given in person, by posting at the Site, by telephone call, or by facsimile contacts as provided in the Land Disturbance Permit application.

In addition to the enforcement provisions of Chapter 11.60 of the Shawnee Municipal Code, the Director may issue a Stop Work Order if the Director determines that work authorized by a Land Disturbance Permit is in violation of this Chapter or the Erosion and Sediment Control Plan, including required drainage, grade or elevation plans, or not in compliance with the provisions of the application, plans or specifications, or conditions upon which a permit was issued, including but not limited to the following:

- A. Applicant fails to submit reports in accordance with the Shawnee Design Manual; or
- B. Inspection by the Director reveals the Site defined by the Land Disturbance Permit is not in substantial compliance with the Erosion and Sediment Control Plan, as determined by the Director; or
- C. Failure to comply with a written order from the Director to bring the Site into compliance with the Land Disturbance Permit, correct a violation of this Chapter, or restore a disturbed area within the time limits defined by the Director; or

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D. Applicant fails to pay any fee.

In the event a Stop Work Order is issued by the Director, the Director shall order and direct the Landowner of the property, or the Landowner's agent, or any party in possession of such property described in the Land Disturbance Permit application, or the Construction Site Operator performing the work, or any work authorized by a City Permit in the Development to immediately suspend work within the area defined in the Land Disturbance Permit.

Such Stop Work Order shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a Person to whom it is directed either by personal delivery, or by posting the area defined by the Land Disturbance Permit and/or mailing a copy of the same to the address identified within the Land Disturbance Permit application for the Permit Holder, Landowner, and/or any party in possession of such property. In the event the Director issues a written Stop Work Order, all Persons shall cease all work on the Development Site, except work necessary to remedy the cause of the suspension.

It shall be unlawful for a Land Disturbance Permit Applicant, Construction Site Operator, party in possession of property subject to a Stop Work Order, or Landowner subject to a Stop Work Order, to allow, consent, or permit any Person to perform work described within the Land Disturbance Permit or any other work requiring a City permit, upon property subject to a Stop Work Order.

Upon written notice by the Director as required herein for a Stop Work Order, the Director may revoke the Land Disturbance Permit if the Applicant fails or refuses to remedy the cause of the suspension set forth in a Stop Work Order.

In the event the Land Disturbance Permit is revoked by the Director, no Person shall permit or continue any work described in the Land Disturbance Permit without first obtaining a new Land Disturbance Permit and paying a new permit fee as required by this Chapter.

**SECTION TWO: SEVERABILITY**

If any part or parts of this Chapter shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Chapter. The Governing Body hereby declares that it would have passed the remaining parts of this Chapter if it had known that such part or parts thereof would be declared invalid.

**SECTION THREE: SAVINGS CLAUSE**

Neither the adoption of this Chapter, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for

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violation of this Chapter, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Chapter, nor be construed as affecting any of the provisions of these Chapters relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Chapter, and all rights and obligations thereunder shall continue in full force and effect.

**SECTION FOUR: EFFECTIVE DATE**

This Chapter shall take effect and be in full force and effect on and after January 1, 2008.

PASSED by the Governing Body this \_\_\_\_ day of \_\_\_\_\_, 2007.

APPROVED AND SIGNED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Jeff Meyers, Mayor

ATTEST:

\_\_\_\_\_  
Vicki Charlesworth, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marvin E. Rainey, City Attorney

I hereby certify that the foregoing is the original Chapter; that said Chapter was passed on the \_\_\_\_ day of \_\_\_\_\_, 2007; that the record of the final vote on its passage is found on page \_\_\_\_\_ of Journal No. \_\_\_\_\_; and that it was published in the Shawnee Dispatch, an official City newspaper on the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Vicki Charlesworth, City Clerk