

**Post-Construction Stormwater Quality Treatment Ordinance
Adopted by City Council 10-22-07**

**AN ORDINANCE REGULATING POST-CONSTRUCTION STORMWATER QUALITY
TREATMENT OF STORMWATER RUNOFF DISCHARGES INTO THE STORMWATER
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 11.16 to be titled "POST-CONSTRUCTION STORMWATER QUALITY TREATMENT" and is to read as follows:

POST-CONSTRUCTION STORMWATER QUALITY TREATMENT

Sections

- 11.16.010 Purpose and Intent.
- 11.16.020 Interpretations.
- 11.16.030 Relationship to Other Laws.
- 11.16.040 Disclaimer of Liability.
- 11.16.050 Applicability.
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- 11.16.070 Submittal of Studies, Plans, and Specifications.
- 11.16.080 Certification of Studies, Plans, and Specifications.
- 11.16.090 Permit Required.
- 11.16.100 Easements.
- 11.16.110 Issuance of Permit.
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- 11.16.140 As-Built Plans.
- 11.16.150 Facility Maintenance.
- 11.16.160 Annual Certification.
- 11.16.170 Disturbance of Constructed Facilities.

11.16.010 Purpose and Intent. 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.

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

The purpose of this Chapter shall be to establish post-Construction minimum Stormwater management requirements and controls on any new Development or redevelopment projects that

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disturb greater than or equal to one acre. This Chapter also will establish requirements for long-term maintenance of structural controls within the City for drainages into the Municipal Separate Storm Sewer System (MS4) and/or into surface waters. This Chapter seeks to meet this purpose through the following objectives:

- A. Minimize increases in Stormwater Runoff from any development in order to reduce non-point source Pollution, siltation, and streambank Erosion and maintain the integrity of stream channels;
- B. Minimize increases in non-point source Pollution caused by Stormwater Runoff from development which would otherwise degrade local water quality, particularly if receiving water bodies are classified as impaired on the current version of the 303d listing of impaired waters in Kansas as identified by the Kansas Department of Health and Environment (KDHE); and
- C. Reduce Stormwater runoff rates, soil Erosion, and non-point source Pollution, wherever possible, through Stormwater quality Best Management Practices (BMPs) and to ensure that these BMPs are properly maintained and pose no threat to public safety.

Within this Chapter, the term Stormwater Quality Facility shall mean BMPs that are implemented or constructed in order to comply with this Chapter.

11.16.020 Interpretations. In their interpretation and application, the provisions of this Chapter are hereby adopted as the minimum requirements for the promotion of the public health, safety, and general welfare. Whenever the requirements of this Chapter are at variance with the requirements of any lawfully-adopted statute, ordinance, resolution, regulation, rule, or other provision of law, the most restrictive, or that imposing the higher standard, shall govern.

11.16.030 Relationship to Other Laws. This Chapter shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations; or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue; or as affecting the liability of any Person; or as vacating or annulling any rights obtained by any Person by lawful action of the City, except as shall be expressly provided for in this Chapter.

11.16.040 Disclaimer of Liability. The requirements set forth in this Chapter establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of these requirements shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any post-Construction Stormwater Quality Facility or use of land, nor shall the acceptance of a preliminary or final Stormwater Quality Facility or the issuance of any City permit imply that the land uses permitted will be free from adverse impacts to Stormwater quality. This Chapter, therefore, shall not create liability on the part of the City or any officer or employee with respect to any legislative or administrative decision lawfully made hereunder.

11.16.050 Applicability. The provisions of this Chapter shall extend and apply to all land within the corporate limits of the City, with the following conditions.

- A. The provisions of this Chapter shall apply to all activities that meet the definition of Development in Chapter 11.04 and disturb an area equal to or greater than one (1) acre in area, and shall also include projects of less than one acre that are part of a larger common plan of Development or sale.

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- B. Notwithstanding any other requirements of this Chapter, this Chapter shall not apply, unless superseded by state or federal regulation, to properties on which a preliminary plat has been approved by the Planning Commission prior to February 1, 2008, and a final plat containing a portion of that plat has been recorded in the Johnson County Office of Records and Tax Administration prior to February 1, 2009. If Public Improvement or Stormwater Management Permits are not obtained for all parts of the Development within two (2) years of the Final Plat approval, all requirements of this Chapter shall apply to all subsequent Construction permits, and Plats and Plans shall be revised accordingly.

This Chapter shall not apply to a site plan approved by the Planning Commission prior to February 1, 2008, and for which a building permit has been obtained and Construction begun prior to January 1, 2010.

- C. The provisions of this Chapter shall apply to City administered street Construction as directed by the Governing Body at the completion of preliminary plans and studies for these projects.

11.16.060 Technical Specifications and Design Criteria. Unless specifically stated and amended by a formal written Policy Statement issued by the Director, all Stormwater Quality Facilities required or constructed within the City shall be designed and constructed in accordance with the latest edition of the Shawnee Design Manual. The Shawnee Design Manual shall include a provision for a reduced treatment requirement than is otherwise indicated on all developments that have a gross site area of less than five (5) acres and are otherwise subject to this Chapter. The Shawnee Design Manual is hereby incorporated by reference into this Chapter.

If hydrologic or topographic conditions warrant greater control than provided by the minimum control requirements set forth in the Shawnee Design Manual, the Director may impose additional requirements deemed necessary to control the Pollutants in Stormwater Runoff. It shall be unlawful for any Person to fail to comply with any additional requirements imposed by the Director as necessary to control the Pollutants.

11.16.070 Submittal of Studies, Plans, and Specifications. In accordance with the design criteria and this Chapter, the Applicant shall submit all preliminary and final studies, plans, and specifications prior to receiving a Stormwater Management Permit.

11.16.080 Certification of Studies, Plans, and Specifications. Prior to commencing Construction of a Stormwater Quality Facility, a Professional Engineer shall submit a certification stating that the final Stormwater management studies, Construction plans, and specifications for Constructing required Stormwater Quality Facilities are in conformance with the standards, requirements, and specifications of this Chapter. The certifying Professional Engineer shall demonstrate conformance to the qualifications enumerated in the Shawnee Design Manual. Certification shall be submitted prior to issuing a Stormwater Management Permit for improvements required by this Chapter. If the Director finds that a proposed Stormwater Quality Facility(ies) will not conform to accepted standards, the Director shall issue a written notice of disapproval.

11.16.090 Permit Required. A Stormwater Management Permit shall be required for the Construction of all Stormwater Quality Facilities within the City. Upon acceptance of the final Stormwater management plan, Construction plans, and specifications, the Applicant shall submit

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a copy of the contractor's bid proposal identifying the total Construction cost of the Stormwater Quality Facility to the Director, who shall review the proposal and determine the amount required for performance and maintenance sureties. An application for the Stormwater Management Permit for facilities required by this Chapter shall be submitted to the Director with written documentation of the Performance and Maintenance Surety.

The Applicant shall post a performance and maintenance bond, cash escrow paid to an approved escrow agent, or letter of credit from a bank in the amount of one hundred twenty-five percent (125%) of the total construction cost of the facility. The surety shall contain forfeiture provisions for failure to complete work specified in the Stormwater management plan. The performance and maintenance escrow shall be released in full, after a three (3) year period following notice of acceptance of the Stormwater Quality Facility. Provisions for a partial pro-rata release of the performance security based on issuance of a Notice of Acceptance for the completed Stormwater Quality Facility may be done at the discretion of the Director. However, the remaining amount of the surety shall at no time be less than fifty percent (50%) of the actual construction cost of the Stormwater Quality Facility and shall be maintained until released by the Director following the three (3) year maintenance period.

11.16.100 Dedicated Tracts and Easements. All Stormwater Quality Facilities shall be located in a separate tract dedicated for this purpose. If the Stormwater Quality Facility serves lands from only one lot and is located on the lot served, the facility may alternatively be located in an Easement dedicated for this purpose. In all cases, the tract or Easement shall include provisions for access from public Right of Way to the Stormwater Quality Facility by Landowners legally responsible for the Facility and/or the Director for periodic inspection and maintenance of the treatment facility. All tract and Easement uses and restrictions shall be binding on future Landowners on which the Stormwater Quality Facility is located, and all Easements or tracts shall be recorded by the Applicant in the land records.

11.16.110 Issuance of Permit. Upon acceptance of the Applicant's assurances of performance and maintenance as provided in this Chapter and after all Easements have been dedicated, accepted, and recorded, the Director may issue a Stormwater Management Permit for facilities required by this Chapter. The permit shall set forth the terms and conditions of the approved Stormwater management plan.

11.16.120 Repairs During Maintenance Period. During the three (3) year maintenance period following the date of completion and acceptance by the Director of the work embraced by this Chapter, the Permit Holder shall make all needed repairs arising out of defective workmanship or materials which, in the judgment of the Director or the certifying Professional Engineer, become necessary during the maintenance period. If within ten (10) days after the mailing of a written notice, the Permit Holder shall neglect to make or undertake with due diligence to make these repairs, the City is hereby authorized to make such repairs at the Permit Holder's expense; provided, however, that in case of an emergency where, in the judgment of the Director, a delay would cause serious loss, hazard, or damage, such repairs may be made without prior notice being sent to the Permit Holder, and the Permit Holder shall pay the cost thereof.

11.16.130 Notice of Acceptance. The Permit Holder shall notify the Director before beginning construction of any Stormwater Quality Facility. The Permit Holder shall keep the Director advised as to the progress of the work and any changes in the schedule.

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Following completion of construction activities for the Stormwater Quality Facility, the Director will issue a Notice of Acceptance only upon submission of "as-built plans," as indicated in Section 11.16.140, and written certification by a qualified Professional Engineer that the Stormwater Quality Facility has been installed in accordance with the approved plan and other applicable provisions of this Chapter.

11.16.140 As-Built Plans. Prior to the Director issuing a written Notice of Acceptance, the Permit Holder shall submit an "as-built" or corrected plan showing in detail all construction changes from the approved plans and specifications, and furnish certification by a qualified Professional Engineer to the Director that the materials and construction of the Stormwater Quality Facility fully comply with the construction plans and specifications and the provisions and intent of this Chapter, and that the facility is fully functional.

11.16.150 Facility Maintenance.

A. Maintenance Agreement

1. Prior to the issuance of a Stormwater Management Permit for property for which a Stormwater Quality Facility is required, the Landowner shall execute an inspection and maintenance agreement binding on all subsequent Landowners of land served by a Stormwater Quality Facility. Such agreement shall provide for access to the facility at reasonable times for regular or occasional inspections by the Director to ensure that the facility is maintained in proper working condition to meet design standards.
2. The agreement shall be recorded by the applicant and/or Landowner in the land records of the County.
3. The agreement shall also provide that if, after notice by the Director to correct a violation requiring maintenance work, satisfactory corrections are not made by the Landowner(s) within a reasonable period of time (30 days maximum), the City may perform all necessary work to place the facility in proper working condition. The Landowner(s) of the lands served by the facility, excluding public Right of Way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be proportioned to each Landowner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished by placing a special assessment on the property(ies), which may be placed on the tax bill and collected in the same manner as ordinary taxes.

B. Maintenance Responsibility

1. The Landowner of the property on which the Stormwater Quality Facility has been constructed pursuant to this Chapter, or any other Person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, Erosion and Sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
2. A maintenance schedule shall be developed for any Stormwater Quality Facility and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan, incorporated into the maintenance agreement, and shall be followed by subsequent responsible parties.

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3. Annual inspections of Stormwater Quality Facilities shall be an integral part of the maintenance plan and schedule and shall be conducted annually by a qualified Professional Engineer.

11.16.160 Annual Certification. On or before the first day of October of each year, the Person responsible for maintaining each Stormwater Quality Facility shall furnish certification by a qualified Professional Engineer, as defined in the Shawnee Design Manual, to the Director that the facility is working properly and that the scope and timing of the prescribed maintenance is being completed.

11.16.170 Disturbance of Constructed Facilities. It shall be unlawful for any Person to obstruct, damage, or materially interfere with the use or operation of a Post-Construction Stormwater Quality Facility required by this Chapter, unless such Facility is fully restored and repaired, and such restoration or repairs have been certified in writing to the Director by a qualified Professional Engineer, within forty-eight (48) hours of the obstruction, damage, or interference.

SECTION TWO: SEVERABILITY

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

SECTION THREE: SAVINGS CLAUSE

Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Ordinance, nor be construed as affecting any of the provisions of these Ordinances 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 Ordinance, and all rights and obligations there under shall continue in full force and effect.

SECTION THREE: EFFECTIVE DATE

This Ordinance shall take effect and be in full force and effect on and after December 17, 2007.

PASSED by the Governing Body this _____ day of _____,
2007.

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

Jeff Meyers, Mayor

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ATTEST:

Vicki Charlesworth, City Clerk

APPROVED AS TO FORM:

Marvin E. Rainey, City Attorney

I hereby certify that the foregoing is the original Ordinance; that said Ordinance 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