

TITLE 17

STORMWATER MANAGEMENT

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Ordinance 09-25 repealed previous Title 17, Stormwater Management, in its entirety and added new Title 17, Stormwater Management. Past Stormwater Management regulations were codified with ordinance numbers 06-76, 89-97, 83-09 and 82-55.

CHAPTER 17.02
GENERAL PROVISIONS

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17.02.010 Title. These regulations shall hereafter be known, cited, and referred to as the "Stormwater Management Ordinance" of the City. (Ord. 09-25 § 2, 2009.)

17.02.020 Applicability. The provisions of this Title shall extend and apply to all land within the corporate limits of the City. Any person, firm, corporation or business proposing to construct buildings or develop land within the City shall make application to the City Engineer for approval of a Stormwater Management Plan and issuance of a Land Disturbance Permit as specified in this Title. (Ord. 16-13 § 1, 2016; Ord. 09-25 § 2, 2009.)

17.02.030 Interpretations. The provisions of this Title are intended to supplement existing zoning and land use ordinances of the City. The provisions herein shall be interpreted and applied as the minimum requirements for the promotion of the public health, safety and general welfare in the City. (Ord. 09-25 § 2, 2009.)

17.02.040 Abbreviations. The following abbreviations when used in this Title shall have the designated meanings:

BMP	Best Management Practice
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
HHW	Household Hazardous Waste
KDHE	Kansas Department of Health and Environment
MARC	Mid-America Regional Council
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
PST	Petroleum Storage Tank (Ord. 09-25 § 2, 2009.)

17.02.050 Generally.

A. For the purpose of this Title, the words and terms as used herein are defined as set out below.

B. Words used in the present tense include the future, words in the singular number include the plural, and words in the plural number include the singular; the word "building" includes the word "structure"; the word "shall" or the word "must" is mandatory; the term "used for" includes the meaning "designated for" or "intended for." (Ord. 09-25 § 2, 2009.)

17.02.060 Definitions.

“Active Stream Zone” is the area of the stream that lies between the ordinary high water mark established on each side.

“Applicant” means a property owner or agent of a property owner who has filed an application for a permit that is subject to the requirements of this Title.

“Best Management Practices” or “BMPs” mean the utilization of methods, techniques or products that have been demonstrated to be the most effective and reliable in minimizing adverse impacts on water bodies and the adjacent Stream Corridors, including but not limited to, schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include physical facilities, schedule of activities, prohibitions of practices, maintenance procedures, and other management practices which, when properly designed, installed and maintained, will be effective to prevent or reduce the discharge of water or air pollution, treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage associated with Land Disturbance activities regulated by this Title.

“Car” means any vehicle meeting the definition for passenger car, bus, pickup truck, motorcycle, recreational vehicle, or motor home given in Chapter 10.01 of the Olathe Municipal Code.

“Certified Professional in Erosion and Sediment Control (CPESC)” means an individual who is currently holding such certification as issued by CPESC, Inc., or other Person holding a State license authorizing them to prepare and submit an Erosion and Sediment Control Plan.

“Certificate of occupancy” means a document issued by the proper authority allowing for the occupancy or use of a building, and certifying that the structure or use has been constructed or will be used in compliance with all the applicable codes and ordinances of the City of Olathe.

“Channel” means a watercourse of perceptible extent which periodically or continuously contains moving water or which forms a connecting link between two bodies of water.

“City” means the City of Olathe, Kansas.

“City Engineer” means the City Engineer for the City of Olathe, Kansas, or duly designated representative.

“City Planner” means the City Planner for the City of Olathe, Kansas, or duly designated representative.

“Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

“Code” means the Olathe Municipal Code.

“Dedication” means the deliberate conveyance by a property owner or developer of private land for public use.

“Detention” means a stormwater management technique of which the primary function is to control the peak rate of surface water runoff by utilizing temporary storage and a controlled rate of release. This may include, but not be limited to, the use of reservoirs, roof tops, parking areas, holding tanks, in-pipe and in-channel storage.

“Developer” means a person who engages in development of real estate, whether or not that person is the landowner.

“Development” means any man-made change to improved or unimproved real property including the construction or reconstruction of buildings or structures; paving, excavation, grading, filling or similar operations; or the filing and recording of a subdivision plat.

“Differential runoff” means the volume and rate of flow of stormwater runoff discharged from a parcel of land or drainage area which is or will be greater than that volume or rate which existed prior to the proposed development or redevelopment.

“Director” means the Director of Public Works or the Director's authorized representative.

“Discharge” means the addition or introduction, directly or indirectly, of any pollutant, stormwater, or any other substance into the MS4 or surface waters.

“Domestic sewage” means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.

“Dry-bottom basin” means a natural or artificial stormwater storage area which is designed and maintained for temporary containment of stormwater runoff.

“Erosion” means the wearing away of land by the action of wind, water, gravity or ice or a combination thereof.

“Erosion and Sediment Control Plan”, or “Plan”, means a Plan for the control of soil erosion and sedimentation resulting from land disturbing activity, and may include, without being limited to, the drawings, specifications, construction documents, schedules, or other related documents which establish the Best Management Practices (BMPs) on a project. The Plan shall include any information required to review the design of the BMPs and to ensure proper installation, maintenance, inspection, and removal of the BMPs, along with the details required to construct any portion of the final storm sewer system that was impeded by a BMP.

“Erosion and Sediment Control Standards”, or “Standards” means the Erosion and Sediment Control design criteria and specifications adopted in writing by the City Engineer.

“Extremely hazardous substance” means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

“Fertilizer” means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

“Floodplain” means a land area adjoining a river, stream, watercourse, or lake which is likely to be flooded in a one-hundred-year flood.

“Floodway” means the channel of a watercourse and the adjacent land area that must be reserved in order to discharge a one-hundred-year flood without cumulatively increasing the water surface elevation more than 1.0 foot.

“Freeboard” means a factor of safety expressed as the difference in elevation between the top of the detention basin dam and the maximum design surface water elevation resulting from the storm for which the basin's required storage volume was determined.

“Governing Body” means the City Council for the City of Olathe, Kansas.

“Hazardous household waste” (HHW) means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

“Hazardous substance” means any substance listed in Table 302.4 of 40 CFR Part 302.

“Hazardous waste” means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

“Illicit discharge” means any discharge to the City’s municipal separate storm sewer system (MS4) that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit.

“Impervious Cover” means those surfaces that cannot effectively infiltrate rainfall, including building rooftops, pavement, sidewalks, and driveways.

“Industrial waste” means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

“Infiltration” means the process of percolating stormwater into the subsoil.

“Land Disturbance” means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

“Land Disturbance Permit” means a permit issued by the City Engineer subsequent to approval of Final Stormwater Management plans and Erosion and Sediment Control Plans under this Title.

“Landowner” means the legal or beneficial owner or owners of a lot or tract. The holder of a contract to purchase or other person having an enforceable proprietary interest in a lot or tract shall be deemed a landowner.

“Maintenance Agreement” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

“Municipal separate storm sewer system” (MS4) means the system of conveyances, (including roads with drainage systems, municipal streets, private streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

“NPDES” means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402 and 405 of the federal Clean Water Act.

“NPDES Permit” means for the purpose of this Title, a permit issued by United States Environmental Protection Agency (EPA) or the State of Kansas that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Off-Site Facility” means a stormwater treatment facility located outside the subject property boundary described in the permit application for land development activity, including facilities that may accept runoff from multiple projects.

“Oil” means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

“One-hundred-year storm” means a rainstorm having a one percent chance of being equaled or exceeded in any given year.

“Ordinary High Water Mark” is the line on the shore established by the fluctuation of water indicated by a physical characteristic such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, presence of litter or debris, or other appropriate means.

“Perennial Vegetation” means grass or other appropriate natural growing vegetation that provides substantial land cover, Erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this Title, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

“Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, State, and local governmental entities.

“Permit” means a Land Disturbance Permit.

“Pesticide” means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

“Petroleum Product” means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and #1 and #2 diesel fuel.

“Planning Commission” means the Planning Commission for the City of Olathe, Kansas.

“Plat” means a legally recorded plan of a parcel of land showing the location and dimension of such features as streets, lots, easements, and other elements pertinent to a subdivision.

“Pollutant” means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil waste, incinerator residue, sewage, pet and livestock waste, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, yard waste, hazardous household wastes, oil and petroleum products, used motor oil, anti-freeze, litter, pesticides, and industrial, municipal, and agricultural waste discharged into water.

“Property Owner” means the named property owner as indicated by the records of the Johnson County, Kansas Records and Tax Administration.

“Recreational field” is a facility such as picnic area, playground, soccer, baseball, softball and football fields, excluding parking lots and paved facilities such as tennis and basketball courts.

“Redevelopment” means development on a tract of land with existing structures where all or most of the existing structures would be razed and a new structure or structures built.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

“Sanitary sewer” means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

“Sediment” means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

“Septic tank waste” means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

“Sewage” means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

“State” means the state of Kansas.

“Stop Work Order” means an order issued which requires that all construction activity on a site be stopped.

“Storm Sewer System” means any conveyance or system of conveyances for stormwater, including road with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, as well as any system that meets the definition of a municipal separate Storm Sewer System or “MS4” as defined by the Environmental Protection Agency in 40 CFR 122.26.

“Stormwater” means storm water runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater runoff” means water resulting from precipitation which is not absorbed by the soil, evaporated into the atmosphere, or entrapped by ground surface depressions and vegetation and which flows over the surface.

“Stormwater Treatment Facilities” or “Facilities” means all structures, plantings, natural features, or other physical elements that are designed, constructed and maintained in accordance with this Title and which are provided to prevent or reduce stormwater pollution or to control stormwater runoff volume and discharges.

“Stream” is a body of running water moving over the earth’s surface in a channel or bed, such as a creek, rivulet or river that flows at least part of the year. Streams are dynamic in nature and their structure is maintained through build up and loss of sediment. Streams are typically formed by natural forces but also include drainage ways, outside of street right-of-way, which were formed by man in the past. Storm sewer systems and roadside ditches in street right-of-way are not considered streams.

“Stream Corridor” is a stream and the adjacent land that is set aside in conformance to this Title and which is substantially preserved in a natural state.

“Surface Waters” means any body of water classified as "surface waters" by the State of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States".

“Ten-year storm” means a rainstorm with a ten percent chance of being equaled or exceeded in any given year.

“Tributary” or “Tributary area” means all of the area contributing stormwater runoff to a given point.

“Twenty-five-year storm” means a rainstorm with a four percent chance of being equaled or exceeded in any given year.

“Unified Development Ordinance” (“UDO”) means the Unified Development Ordinance for the City of Olathe, Kansas, found in Title 18 of the Olathe Municipal Code.

“Waste” means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. The Federal definition of solid waste is found at 40 CFR 257.2.

“Water Bodies” means surface waters including rivers, streams, lakes, ponds and wetlands, including all areas designated by the federal government as water of the United States.

“Water quality standard” means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

“Watercourse” means any stream, creek, brook, branch, depression, reservoir, lake, pond, or drainageway in or into which stormwater runoff flows. It is a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

“Wet-bottom basin” means a stormwater storage area which is designed and maintained to contain water temporarily and to hold permanently an additional volume of water at a level below the discharge structure of the storage area. A wet-bottom basin must have a minimum surface area equal to five percent (5%) of the upstream watershed area, up to two hundred forty (240) acres, and a depth of not less than four (4) feet. (Ord. 16-13 § 2, 2016; Ord. 09-25 § 2, 2009.)

17.02.070 Objectives. To promote the public health, safety, and general welfare of the citizens of the City, this Stormwater Management Ordinance is enacted for the general purpose of assuring the proper balance between human use of land and the preservation of a safe and beneficial environment.

A. The provisions of these regulations are intended to:

1. Reduce property damage and to minimize the hazards of personal injury and loss of life due to flooding and Erosion;
2. Protect the overall health and stability of the City’s water bodies; and
3. Be consistent with the goals of and meet the requirements set forth by the Clean Water Act and the NPDES under the State of Kansas NPDES Permit.

B. These objectives will be accomplished through the following:

1. Establishment of a Stormwater management system pursuant to Chapter 17.04;
2. Definition and establishment of Stormwater management practices pursuant to this Title;
3. Establishment of methods and guidelines for attenuating or avoiding flooding within the City from the cumulative effects of increased volume and peak Discharge of Surface Water runoff;
4. Pursuant to Chapters 17.06, 17.14, 17.16 and 17.18 establishment of requirements for construction site Erosion control, natural Stream Corridor preservation and protection, site post-construction Stormwater treatment, and prevention of illicit Discharges to the City’s Municipal Separate Storm Sewer System (MS4);

5. Establishment of an appeals board to review decisions of the City Engineer and to mediate disputes regarding the interpretation and implementation of the provisions of this Title. (Ord. 09-25 § 2, 2009.)

17.02.080 Relationship to Other Laws. These regulations 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, firm or corporation, or as vacating or annulling any rights obtained by any Person, firm, or corporation, by lawful action of the City, except as shall be expressly provided for in these regulations. (Ord. 09-25 § 2, 2009.)

17.02.090 Disclaimer of Liability. The performance standards and design criteria set forth in this Title establish minimum requirements which must be implemented with good engineering practice and workmanship.

Use of the requirements contained herein 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 Stormwater Treatment Facility or use of land. Nor shall the approval of a Stormwater Treatment Facility and the issuance of a Land Disturbance Permit imply that land uses permitted will be free from damages caused by Stormwater runoff. The degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records, engineering and scientific methods of study. Larger storms may occur or Stormwater runoff heights may be increased by man-made or natural causes. These regulations therefore shall not create liability on the part of the City or any officer with respect to any legislative or administrative decision lawfully made hereunder. (Ord. 16-13 § 3, 2016; Ord. 09-25 § 2, 2009.)

17.02.100 Appeals. Any Person aggrieved by a decision of the City Engineer in the enforcement of this Title shall have the right to appeal any such order, requirement, decision or determination to the Board of Code Review, as established by Chapter 2.74 of the Olathe Municipal Code, in accordance with the following procedures:

A. A hearing before the Board of Code Review shall be held within thirty (30) days of a final order, requirement, decision or determination of the City Engineer. The Board shall consider any information offered by the aggrieved Person bearing on the dispute and shall recommend to the City Engineer as appropriate: reversal, modification or confirmation. The City Engineer, who shall be present at the meeting, shall act upon the recommendation in a manner consistent with his/her responsibilities under these regulations.

B. Any Person aggrieved by any final decision of the City Engineer, following review by the Board of Code Review, may seek review by a court of competent jurisdiction in the manner provided by the laws of the State. (Ord. 09-25 § 2, 2009.)

17.02.110 Penalty for Violations – Actions. The violation of any provision of this Title is a misdemeanor, and any Person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00); and the City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this Title and to abate nuisances maintained in violation thereof; and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure, or land. Each day any violation of this Title shall continue shall constitute a separate offense. (Ord. 09-25 § 2, 2009.)

CHAPTER 17.04

THE STORMWATER MANAGEMENT SYSTEM

Sections:

- 17.04.010 General
- 17.04.020 Applicability
- 17.04.030 The Major System
- 17.04.040 The Minor System
- 17.04.050 Management Controls for New Developments
- 17.04.060 Management Methods
- 17.04.070 Public and Private Responsibilities Under the Stormwater Management System

17.04.010 General. This Chapter establishes the Stormwater management system, which shall be composed of a major system, a minor system, management controls, and management practices. (Ord. 09-25 § 2, 2009.)

17.04.020 Applicability. The regulations contained herein apply to the minor system. (Ord. 09-25 § 2, 2009.)

17.04.030 The Major System. The major system shall be composed of the regulatory floodplain as shown on the National Flood Insurance Program maps as developed for the City by the U.S. Department of Housing and Urban Development, Federal Insurance Administration. All components of the major system shall be designed to handle a one-hundred-year storm. (Ord. 09-25 § 2, 2009.)

17.04.040 The Minor System. The minor system shall consist of storm drainage facilities including, but not necessarily limited to, infiltrations systems and Stormwater Treatment Facilities, and roadway curb and gutter, open Channels, swales and enclosed conveyance systems, all as defined in this Chapter, which transport storm runoff to the major system (regulatory floodplain). Minor system facilities are those designed to accommodate runoff resulting from a storm with a given design frequency. (Ord. 09-25 § 2, 2009.)

17.04.050 Management Controls for New Developments.

A. Management controls are regulations applicable to new Developments in the minor system under the provisions of this Title. Such controls shall limit any activity that will adversely affect hydraulic function of Detention facilities, open Channels, drainage swales, Stormwater Treatment Facilities or enclosed Stormwater conveyance systems contained within the minor system as previously defined.

B. Exceptions to the applicability of the use of management controls for new Developments shall be granted in the following situations:

1. Additions to, improvements or repair of existing single-family and duplex dwelling structures;
2. All Development Projects of less than one acre, including new construction of any one single-family or duplex dwelling units;
3. On land used for agricultural purposes where no change in grade over that which has existed historically will take place;
4. Construction of any buildings or structures on a site which has been previously provided with Stormwater management control Facilities as a part of a larger unit of Development. (Ord. 09-25 § 2, 2009.)

17.04.060 Management Methods. The following methods may be utilized upon approval of the City Engineer. Use of these methods shall be fully in accordance with the design criteria and performance standards as set forth in this Title:

A. **STORAGE.** Runoff may be stored in temporary or permanent Detention basins, or through rooftop or parking lot ponding, or percolation storage, or by other acceptable means and installed in accordance with the UDO.

B. **OPEN CHANNELS.** Maximum feasible use shall be made of existing drainageways, open Channels, and drainage swales that are designed and coordinated with the design of building lots and streets.

C. **STREETS AND CURBS.** Streets, curbs, and gutters shall be an integral part of the Stormwater runoff management system. To the maximum extent possible, drainage systems, street layout and grades, lotting patterns and the location of curbs, inlets, site drainage and overflow swales shall be concurrently designed in accordance with the standards set forth in this Title.

D. **ENCLOSED CONVEYANCE SYSTEM.** Enclosed conveyance systems consisting of inlets, conduits, and manholes may be used to convey Stormwater runoff.

E. **STORMWATER TREATMENT FACILITIES AND INFILTRATION SYSTEMS.** Stormwater management systems are those systems designed to capture and control runoff from frequent storm events in order to remove Pollutants and reduce downstream Channel Erosion. Examples include, but are not limited to, rain gardens, bioretention cells, wetlands and structural filtration systems.

F. **OTHER.** The Stormwater runoff management practices enumerated in this section shall not constitute an exclusive listing of available management practices. Other generally accepted practices and methods may be utilized where approved by the City Engineer. (Ord. 09-25 § 2, 2009.)

17.04.070 Public and Private Responsibilities Under the Stormwater Management System.

A. **PUBLIC RESPONSIBILITIES.** The administration of the regulations contained in this Title shall be the responsibility of the City Engineer, who shall review and approve Stormwater management plans as provided herein. Inspection of Private Best Management Practices (BMPs) will be the responsibility of the City Engineer.

B. **PRIVATE RESPONSIBILITIES.** Each Developer of land within the City has the responsibility to provide on the Developer's property all approved Stormwater Treatment Facilities to ensure the adequate drainage and control of Stormwater on the Developer's property both during and after construction of such Facilities. All installed BMPs shall remain accessible for annual inspection by the City.

C. **MAINTENANCE.**

1. **Operation and maintenance of publicly owned Facilities:** The City Department of Public Works shall be responsible for the maintenance of all drainage structures and improved Watercourses which are within public right-of-way or are under public ownership.

2. **Maintenance:** Stormwater Treatment Facilities shall be maintained by the Property Owner, occupant or agent in charge of such property.

3. **Failure to maintain:** If the City Engineer determines that the Property Owner, occupant or agent in charge of any lot, piece or parcel of land on which a drainage control structure or BMP exists or abuts has failed to properly maintain such Facility as previously set forth, then he/she shall notify the Property Owner, occupant or agent in charge of the violation in writing. If the Property Owner, occupant or agent in charge fails, neglects or refuses to comply with the requirements specified in the notice, the City Engineer shall proceed to cause the necessary remedial work to be performed and shall report the costs of such remedial work to the City Clerk.

The City Clerk shall follow the provisions of K.S.A. 12-1617e to collect the City's cost, including mailing a statement of costs to the last-known address of the Property Owner, occupant or agent in charge of the property and if such costs are not paid to the City within ten days of such notice, the Governing Body shall pass an ordinance levying a special assessment for such costs against the property on which the Facility exists or abuts, and the City Clerk shall certify such assessment to the County Clerk for collection and payment to the City the same as other assessments and taxes are collected and paid. (Ord. 09-25 § 2, 2009.)

CHAPTER 17.06

STREAM CORRIDOR REQUIREMENTS

Sections:

- 17.06.010 Purpose
- 17.06.020 Findings
- 17.06.030 Scope
- 17.06.040 Delineation of the Stream Corridor
- 17.06.050 Designation of the Stream Corridor
- 17.06.060 Stream Bank Stability
- 17.06.070 Flood Plain
- 17.06.080 Allowable Uses
- 17.06.090 Maintenance of the Stream Corridor
- 17.06.100 Deviations

17.06.010 Purpose. This Chapter is created to establish acceptable minimum requirements to preserve and protect Stream Corridors and other valuable aquatic riparian resources within the City. (Ord. 09-25 § 2, 2009.)

17.06.020 Findings. The Governing Body finds that Stream Corridors provide multiple benefits to the citizens of Olathe, benefits which include:

- A. preservation of habitat for plants and animals;
- B. protection of water quality and base flow potential through infiltration, filtration, runoff velocity control and Sediment retention;
- C. stabilization of Stream banks thus minimizing bank Erosion, Stream migration and property damage due to Stream bank instability;
- D. temporary storage and velocity reduction of flood waters;
- E. recreational and educational opportunities;
- F. beautification and aesthetic enhancement of the City;
- G. effective visual and auditory screening between adjoining land uses;
- H. enhance property value;
- I. proper management of Stream Corridors will continue to enhance the quality of life for the citizens of Olathe and that conservation and preservation of Stream Corridors is necessary to protect the public health, safety and welfare;
- J. regulation of Stream Corridors by establishing acceptable minimum standards is an important component of the City's overall Stormwater management strategy and such regulation is consistent with the provisions and goals of the Clean Water Act, the NPDES, and other federal, State, and local requirements for water quality and environmental preservation;
- K. natural Channels migrate in response to a variety of factors, including changes in upstream and downstream land uses, and Property Owners must consider the potential for migration when locating facilities. (Ord. 09-25 § 2, 2009.)

17.06.030 Scope and Applicability. No land shall be disturbed nor structure built, located, converted or altered without full compliance with this Chapter's Stream Corridor Requirements, unless Development occurs as allowed by the following exceptions:

A. A preliminary plan, preliminary Plat, or rezoning of a planned district that was approved prior to the effective date of this Title, unless such approved preliminary plan or preliminary Plat has expired.

B. Non-substantial revisions to an approved preliminary plan or plat specified in 17.06.030 (a) after the effective date of this Title which does not show improvements in or alterations to the Stream Corridor as designated in 17.06.050 closer than the improvements or alterations already shown on the approved preliminary plan or Plat. For the purpose of this section, improvement is defined as any improvement other than the uses allowed in Section 17.06.080, Allowable Uses.

Note: After the effective date of this Title, if revisions are proposed to an approved plan or Plat that constitute a “substantial or significant change” as outlined by Section 18.12.200 of the UDO, then any Development done pursuant to such revisions shall occur in accordance with this Chapter. (Ord. 09-25 § 2, 2009.)

17.06.040 Delineation of the Stream Corridor. The Stream Corridor shall be designated on preliminary Plats, preliminary plans, final plans and final Plats. The boundary of the Stream Corridor shall be documented by a legal boundary description in such instrument as the City Engineer may require, which could include but is not limited to a separate tract of land dedicated on the final Plat, including Off-Site Facilities dedicated by separate instrument or Plat. The City Engineer may adopt written regulations to implement the provisions of this section. The instrument used to document the boundary must also identify the area as a "Natural Preservation Stream Corridor" and shall stipulate that these areas are subject to the restrictions and protections provided for in this Chapter. The instrument shall further stipulate that restrictions and protections are subject to change by action of the Governing Body in accordance with the provisions of this Title. (Ord. 09-25 § 2, 2009.)

17.06.050 Designation of the Stream Corridor. The Stream Corridor shall consist of the Stream and all lands adjacent to the Stream on both sides for the minimum distance from the Ordinary High Water Mark specified below:

Stream Tributary Area	*Minimum distance from Ordinary High Water Mark to the limit of Stream Corridor on each side
Less than 25 acres	15 feet (See 17.06.050 B)
Including 25 acres up to 40 acres	30 feet (See 17.06.050 C)
Including 40 acres up to 160 acres	60 feet
Including 160 acres up to 5000 acres	100 feet
5000 acres and greater	120 feet

*Distances in excess of the minimum may be required as indicated in 17.06.060(A).

A. Stream Corridor shall be designated along Streams with a Tributary Area for drainage of 40 acres or more with the following exceptions:

1. Streams of less than 300 feet in length measured along the center of the Active Stream Zone and which are between portions of an existing Storm Sewer System may be enclosed within a pipe or box structure.

2. Streams adjoining an existing Storm Sewer System may be enclosed within a pipe or box structure, if the application of this Chapter would otherwise leave a Stream remnant less than 300 feet in length measured along the center of the Active Stream Zone.

B. Streams with Tributary Areas less than 25 acres may construct a Storm Sewer System in accordance with Chapter 17.06 and 17.10. If a Storm Sewer System is not constructed, a Stream Corridor shall be designated which may be variable in width but is generally not less than 15 feet from Ordinary High Water Mark to the limit of the Stream Corridor on each side. The actual corridor width shall be adequate to provide for: Stream geomorphology, Stream bank stability, preservation of tree canopy, flood control and maintenance access.

C. Streams with Tributary Areas including 25 acres up to 40 acres may construct a Storm Sewer System in accordance with Chapters 17.06 and 17.10. If a Storm Sewer System is not constructed, a Stream Corridor shall be designated which may be variable in width but is generally not less than 30 feet from Ordinary High Water Mark to the limit of the Stream Corridor on each side. The actual corridor width shall be adequate to provide for: Stream geomorphology, Stream bank stability, preservation of tree canopy, flood control and maintenance access.

D. Stream Corridors shall be terminated when a Stream Discharges into a Wet-bottom basin and shall resume at the outlet from the Wet-bottom basin.

E. Stream Corridor designation is not required for manmade ditches within street right-of-way.

F. Stream Corridor designation is not required for construction projects which are undertaken to explicitly protect existing buildings or property from flooding and/or Erosion caused by actions such as Channel migration or bank instability.

G. Regardless of the Stream or Stream Corridor size, buildings must maintain a minimum distance of 40 feet from the Ordinary High Water Mark of a Stream.

All Developments, which do not dedicate a Stream Corridor in accordance with this Chapter, shall construct Storm Sewer Systems to meet the requirements of Municipal Code Chapters 17.06 and 17.10. In the event an approved Development plan showing the construction of a Storm Sewer System cannot obtain a permit from the appropriate State or federal agency or agencies, the Property Owner is required to comply with this Chapter and reapply for a preliminary plan, preliminary Plat, special use permit or rezoning, as appropriate. (Ord. 09-25 § 2, 2009.)

17.06.060 Stream Bank Stability.

A. To minimize the need for future bank stability measures, the City Engineer may require geotechnical or geomorphological studies of Streams prior to approval of Development plans or building permits for any structure to be located adjacent to a Stream. Such studies may be used to increase the Stream Corridor width requirement and could include the designation of the maximum expected natural Channel migration, analyses of slope stability, and foundation analysis of adjacent structures. At a minimum, for slope stability and foundation analysis purposes, it will be assumed Streams migrate at least one half the distance of the minimum Stream Corridor indicated in 17.06.050; provided, however, the same studies may also be required to be performed assuming the maximum Channel migration has occurred. The City Engineer is authorized but not required to issue technical guidance to assist Applicants in making this estimate of Channel migration potential.

B. The use of rip-rap, retaining walls, gabions, revetments or other bank armoring techniques shall not be used to reduce the Stream Corridor boundaries established in 17.06.050. Such activities are allowed only when the City Engineer determines them to be necessary to protect structures, primarily when Stream migration has exceeded the original estimate of natural Channel migration. The City Engineer may allow bank stabilization measures that are designed to incorporate natural Channel features and vegetation in situations where projects will enhance the value of the Stream Corridor and minimize the likelihood of more extreme measures being needed at a later time. (Ord. 09-25 § 2, 2009.)

17.06.070 Flood Plain. Additional restrictions to activities within the Stream Corridor shall be applied in accordance with Chapter 18.30.100 of the UDO. (Ord. 16-13 § 4, 2016; Ord. 09-25 § 2, 2009.)

17.06.080 Allowable Uses.

A. "Active Stream Zone" allowable uses should utilize BMPs to minimize disturbance to and impacts on the Stream Corridor and include:

1. Sanitary sewer line crossings.
2. Other utilities crossings as approved by the City Engineer.
3. Roadway crossings, limited to minimum required to provide access for orderly Development.
4. Crossings for foot, bicycle, golf cart, and similar uses.
5. Stream restoration projects and bioengineered bank stabilization.
6. Storm sewer pipe Discharge.
7. Stream gauging and water quality monitoring.
8. Pump stations and structures required to transport water from the Stream.

Crossing the Active Stream Zone shall be minimized, crossing at skewed angles shall be avoided, and the length and area disturbed shall be restricted to the maximum extent feasible.

B. "Stream Corridor" allowable uses shall utilize BMPs to minimize disturbance or impacts to the Stream Corridor and include:

1. All activities allowed in the "Active Stream Zone."
2. Paved or unpaved paths for foot, bike, golf carts, and other similar uses. Paths must be constructed at or near natural grade to minimize clearing, filling and grading.
3. Utility installations are allowed provided it is demonstrated installing the utility outside the Stream Corridor is not feasible. Storm sewer pipes may Discharge into the Active Stream Zone or Stream Corridor if appropriate measures to prevent Erosion and scouring are taken. Utility easements will be dedicated on the subdivision Plat, or by separate document after Platting if City Engineer approval is obtained for the utility location. The City Engineer may establish minimum standards for utility construction in the Stream Corridor.
4. Sanitary interceptor sewers installed in accordance with the City's current sewer master plan.
5. Other uses approved by the City Engineer that meet the intent of this Chapter. Allowable uses in the Stream Corridor are limited to low-impact passive uses that require little or no disturbance, grading, clearing, or filling of the existing native vegetation, and are related to recreation, public enjoyment, and protection of the Stream and Stream Corridor. These uses may include, but are not limited to, small non-habitable structures ancillary to the approved use. Examples of allowable structures include play equipment, gazebos and picnic shelters.
6. Allowable uses do not include parking facilities or private dry bottom basins.
7. Recreational Fields, public parklands and golf course fairways which may encroach into the Stream Corridor, reducing the Stream Corridor width up to one-half the width indicated in Section 17.06.050, if the following guidelines are followed:

(a) Recreational Fields, public parklands and golf course fairways which reduce the Stream Corridor shall provide additional Stream Corridor width within the Development sufficient to provide the same net Stream Corridor area that would result from enforcement of the Stream Corridor widths in Section 17.06.050.

(b) Golf course fairway crossings will be given the following additional latitude.

(1) Fairway crossings within the Stream Corridor are allowed if the crossing does not exceed 120 feet (measured perpendicular to the fairway direction) and the number of crossings is limited to 2 per 1,000 feet of Stream.

(2) Fairway crossings within the Stream Corridor shall be maintained as either unmowed native grasses and trees or as "low rough," which permits grasses mowed to about 1 ½ to 2 inches. Additional stabilization may be required immediately adjacent to the Stream banks where "low rough" is established.

(3) Designers are encouraged to limit the size and number of Stream crossings, to minimize Stream crossing impacts on wooded areas, and to orient Stream crossings perpendicular to the Stream.

8. Existing agricultural uses.

(a) Private Wet-bottom basin and other impoundments for recreational, aesthetic, or irrigation purposes are allowed within the Active Stream Zone and Stream Corridor with the following criteria:

(1) Wet-bottom basin and other impoundments shall be constructed in accordance with this Chapter and 17.10 and all State and Federal regulations.

(2) Pre-existing private Wet-bottom basin within a Development are allowed when the Developer provides certification from a licensed engineer either that the preexisting or reconstructed outlet works, dam structure, and other hydraulic functions of the Wet-bottom basin meet current Federal, State and City requirements.

(3) Where an existing or new private Wet-bottom basin is created, the Stream Corridor terminates at the normal pool level where Stormwater Discharges into the Wet-bottom basin and resumes 10 feet below the toe of the dam embankment. Where private Wet-bottom basins are removed or filled as part of the Development, the Stream shall be restored through that area and the Stream Corridor shall be created through the existing private Wet-bottom basin area. (Ord. 09-25 § 2, 2009.)

17.06.090 Maintenance of the Stream Corridor.

A. Stream Corridor Maintenance Agreement – A Stream Corridor Maintenance Agreement shall be submitted with all final plans and final Plats and is subject to approval by the City Engineer. At a minimum, the Maintenance Agreement should:

1. Identify the responsible party for maintaining the Stream Corridor, or segment thereof, the boundaries of which are identified as an attachment to the Maintenance Agreement.

2. Establish the minimum frequency and levels of maintenance to be done.

3. Establish the frequency of inspection.

4. Identify resources available to provide maintenance.

5. Identify prohibited practices and homes and/or business association's enforcement process for restoration.

6. Identify the City's rights in the event that the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.

7. Clarify how modifications or additions can be made to the Maintenance Agreement.

8. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain the Stream Corridor if the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.

9. The Property Owner or Developer shall form a homes and/or business association prior to the sale of any lots, and the homes and/or business association covenants shall include the provisions of the approved Maintenance Agreement. Should a homes and/or business association no longer exist, or be viable, the City Engineer shall have the option to require adjacent Property Owners to provide maintenance of the Stream Corridor as set forth in this Chapter.

10. Approval of all final plans and final Plats shall be subject to the City's receipt of an acceptable Stream Corridor Maintenance Agreement. The final Plat and homes and/or business association deed restrictions shall contain language approved by the City Engineer which identifies the homes and/or business association as the entity which will have permanent responsibility and authority to enter upon the Stream Corridor to fully perform all obligations pursuant to the Stream Corridor Maintenance Agreement. Said homes and/or business association deed restrictions shall be recorded with the Johnson County, Kansas Records and Tax Administration concurrent or prior to recording of the final Plat. The following Title and plat notification requirements concerning Stream Corridors and associated Development and use restrictions shall be required:

(a) Notice on Plat. For all subdivision proposals within the Stream Corridor, the Applicant shall include a notice on the face of the plat. The notice shall be substantially as set forth below:

Notice: This site lies within a protected Stream Corridor, as defined and regulated in City of Olathe, Kansas, Municipal Code. Restrictions on the use or alteration of the Stream Corridor may apply. This property is also subject to the obligations and requirements of the Stream Corridor Maintenance Agreement approved by the City.

(b) Notice on Title. The owner of any property within a Stream Corridor, upon the approval of a Development Application covering property containing a Stream Corridor (which does not involve the approval of a final plat) shall record a notice of presence for each Stream Corridor with the Johnson County, Kansas Records and Tax Administration. This recording shall contain notice of the Stream Corridor Requirements, as found in Chapter 17.06 of the Olathe Municipal Code, as applied to the property, and the limitations on actions in or affecting such Stream Corridor. The Applicant must submit proof that the notice has been legally recorded before final approval of the Development is granted. The notice shall run with the land and failure to provide this notice to any purchaser prior to transferring any interest in the property shall be in violation of this Chapter. The notice shall be substantially as set forth below:

STREAM CORRIDOR NOTICE

Legal Description:

Present Owner:

Notice: This property is located within or contains the following Stream Corridor, as defined and regulated in the City of Olathe, Kansas, Municipal Code. Restrictions on the use or alteration of land within the Stream Corridor may apply. This property is also subject to the obligations and requirements of the Stream Corridor Maintenance Agreement approved by the City.

Application #___ filed on (Date).

Signature of owner(s).

Notarization:

State of Kansas }

Johnson County }

On this day personally appeared before me to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that they freely and voluntarily signed the same for the uses and purposes therein stated.

Given under my hand and official seal this day of ____.
Notary Public in and for the State of Kansas.

B. Allowed maintenance (as approved and specified in the Maintenance Agreement as required in subsection C below):

1. Removal of dead trees/brush and trash.
2. Removal of debris that could cause flooding.
3. Selective City-approved tree trimming or tree removal to mitigate safety hazards or that could cause flooding.
4. Selective (spot) chemical spraying for noxious weeds.
5. Periodic mowing or other BMPs to enhance natural conditions.
6. Maintenance of all City approved improvements.
7. Maintenance of City approved bank stabilization measures.

C. Prohibited Maintenance

1. Regular mowing outside of recreational use areas.
2. Non-selective chemical spraying. (Ord. 09-25 § 2, 2009.)

17.06.100 Deviations.

A. The City Engineer may approve deviations from the specific terms of this Chapter which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship for the Applicant, and provided that the spirit of this Chapter shall be observed, the public safety and welfare secured and substantial justice done for the Applicants.

B. An application for a deviation may only be granted upon a finding that all of the following conditions have been met:

1. That the granting of the deviation will not adversely affect the rights of adjacent Landowners;
2. That the strict application of the provisions of this Chapter would constitute unnecessary hardship upon the Landowner represented in the application. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare;
3. That granting the deviation will comply with the general spirit and intent of this Chapter;
4. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or State laws. Upon consideration of the factors listed above and the purposes of this Chapter, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter; and
5. Granting the deviation will comply with the minimum requirements of the MARC BMP Manual and the EPA Clean Water Act.

C. In considering deviation applications, the City Engineer has the discretion of using any or all of the following project evaluations when, in the judgment of the City Engineer, these evaluations are relevant and appropriate. No individual evaluation and/or combination of evaluations are necessarily required for an application to be approved, and the City Engineer may weigh these evaluations in light of all the following considerations in determining whether or not to approve an application:

1. Any increase in danger to life and property due to flooding or Erosion damage;
2. The susceptibility of the proposed facility to damage from factors such as flooding, Stream bank Erosion and Channel migration and the effect of such damage on the individual owner;
3. The availability of alternative locations for the proposed Development;
4. The compatibility of the proposed Development with the City's comprehensive plan;
5. The deviation is the minimum necessary to afford relief;
6. Any decrease in the average width of the Stream Corridor set aside;
7. Any increase to bank instability or bank Erosion and the resulting effects on other properties;
8. The extent to which the proposed Development retains the natural terrain within the Stream Corridor while avoiding such activities such as filling, grading and constructing retaining walls.

9. The extent to which the proposed Development provides protection from negative impacts to water quality, base flow potential through infiltration, runoff velocity, temporary storage area for flood waters and Sediment retention capability which is compatible with the intent of this Chapter; and

10. The extent to which the proposed Development provides aesthetic enhancement, preservation of habitat for plants and animals, recreational opportunities, educational value and effective screening from adjoining land uses which are compatible with the intent of this Chapter.

D. Denial of an application for deviation maybe appealed to the Board of Code Review.
(Ord. 09-25 § 2, 2009.)

CHAPTER 17.08

PROCEDURE FOR THE SUBMISSION, REVIEW, AND APPROVAL OF STORMWATER RUNOFF MANAGEMENT PLANS

Sections:

- 17.08.010 General
- 17.08.020 Preliminary Stormwater Management Plan
- 17.08.030 Final Stormwater Management Plan

17.08.010 General. No Development shall increase the quantity and rates of Stormwater emanating from said land areas except in accordance with an approved Stormwater Management Plan as provided in this Title. The Stormwater Management Plan shall be prepared by a professional engineer licensed by the State. No building permits shall be issued prior to the approval of the Stormwater Management Plan by the City Engineer. (Ord. 09-25 § 2, 2009.)

17.08.020 Preliminary Stormwater Management Plan.

A. A preliminary Stormwater Management Plan shall accompany all preliminary applications for land Development. The preliminary Stormwater Management Plan must include conceptual Stormwater Management Plans, sufficient information to evaluate the existing hydrologic and environmental characteristics of the Development, impacts of the proposed Development, preliminary sizing for Detention and Stormwater Treatment Facilities, and locations of any existing or proposed Stream Corridors, floodplains, access easements, conservation easements, or tracts, and a description of the maintenance responsibility for proposed private Stormwater Facilities. The City Engineer may set additional minimum submittal requirements.

B. Following the receipt of the preliminary Stormwater Management Plan, a general review meeting shall be conducted and shall include the City Engineer, City Planner, representatives of the Developer and the Developer's engineer. The purpose of this review shall be to jointly agree on the conceptual methods proposed to be utilized and the possible effects of the proposed Development on existing or future adjacent Developments. (Ord. 09-25 § 2, 2009.)

17.08.030 Final Stormwater Management Plan.

A. Following the review of the preliminary Stormwater Management Plan and after the general approval of the preliminary plan by the City Engineer, a final Stormwater Management Plan shall be prepared for each phase of the proposed Development as each phase is developed. The submittal of the final plan shall coincide with the application for final approval of the Development and shall constitute a refinement of the concepts approved in the preliminary plan. If a Development is to be phased, the total area of the Development is to be considered in all calculations and Facilities should be designed for each phase which would be compatible with those of the total Development plan.

B. The final Stormwater Management Plan, in addition to the information from the preliminary Stormwater Management Plan, shall include all of the information required in the Standards found in Chapter 17.10 and any other submittal requirements as determined by the City Engineer, as well as the following minimum Landscape and Stabilization Requirements:

1. A list of vegetative stabilization and management techniques to be used at a site after construction is completed.
2. An explanation of how the site will be stabilized after construction.
3. Identify the responsible party for the maintenance of vegetation at the site.
4. Identify the practices that will be employed to ensure adequate vegetative cover is preserved.
5. The name and address of the State registered landscape architect who prepared the design.

C. The final Stormwater Management Plan shall be reviewed by the City Engineer. If it is determined according to present engineering practice that the proposed Development will provide control of Stormwater runoff in accordance with the purposes, design criteria and performance standards of these regulations and will not be detrimental to the public health, safety, and general welfare, the City Engineer shall approve the plan or conditionally approve the plan, setting forth the conditions thereof. If approved, a Land Disturbance Permit for the Development shall be granted.

If it is determined that the proposed Development will not control Stormwater runoff in accordance with these regulations, the City Engineer shall not approve the Stormwater Management Plan. If not approved, the application and data shall be returned to the Applicant for corrective action and resubmittal. (Ord. 16-13 § 5, 2016; Ord. 09-25 § 2, 2009.)

CHAPTER 17.10

DESIGN CRITERIA AND PERFORMANCE STANDARDS

Sections:

- 17.10.010 General
- 17.10.020 Stormwater Conveyance and Detention Criteria
- 17.10.030 Stormwater Treatment Criteria
- 17.10.040 Modifications and Appeals to Standard Criteria

17.10.010 General. This Chapter sets forth the rules that shall govern the design of improvements with respect to managing Stormwater runoff within the City of Olathe. (Ord. 09-25 § 2, 2009.)

17.10.020 Stormwater Conveyance and Detention Criteria.

A. All drainage components shall be designed in accordance with the *Olathe Technical Specifications and Design Criteria for Public Improvements* manual as adopted in the UDO.

B. Stormwater Detention Standards: The *Olathe Technical Specifications and Design Criteria for Public Improvements* manual contains the complete requirements for Detention. Below are the general requirements for Stormwater Detention in Olathe:

All Development projects larger than one (1) acre shall be required to control the rate at which Stormwater is released from the developed site in order to mitigate increases in Stormwater runoff caused by the Development. This shall be accomplished through Stormwater Treatment Facilities, which shall be designed to manage Stormwater runoff generated by the 99% (1-year) and 10% (10-year) chance (return frequency) design storms. In watersheds where the City Engineer is aware of known downstream flooding concerns, the City Engineer may, at his or her discretion, require, in addition to the above required design storms, Detention of larger storm events up to the 1% (100-year) design storm to provide protection against increases in downstream flooding and Stream bank Erosion.

C. Easements. Permanent easements for the Detention and conveyance of Stormwater, including easements of access to structures shall be dedicated to the City. Any restrictions shall be clearly indicated on the Plat.

D. Land Disturbance Permits. A Land Disturbance Permit for projects including Detention Facilities can be granted by the City Engineer only after the final Stormwater Management Plan has been approved and all easements have been dedicated, accepted, and recorded, and all required maintenance assurances and required bonds have been executed. (Ord. 16-13 § 6, 2016; Ord. 09-25 § 2, 2009.)

17.10.030 Stormwater Treatment Criteria.

A. The City Engineer shall adopt and maintain Stormwater Treatment Standards to implement and interpret the provisions of this Title. The 2012 edition of the *Mid-America Regional Council and American Public Works Association Manual of Best Management Practices for Stormwater Quality (MARC BMP Manual)*, and all appendices, shall be the basis of these Stormwater Treatment Standards. Included in the Stormwater Treatment Standards shall be additional technical guidance or exceptions to the *MARC BMP Manual* which have been adopted by the City Engineer. The additional guidance or exceptions may include, but not be limited to, modified BMPs, design criteria, construction specifications, or standard details. Copies of all adopted standards shall be on file and available in the City's Public Works Department.

B. Minimum Control Requirements: All Stormwater Treatment Facilities shall be designed to provide a combination of pollutant removal and water volume control that satisfies the level of service and value rating calculations set forth in the Stormwater Treatment Standards and other requirements established by City approved watershed management plans or studies.

C. Non-Structural Stormwater Practices: Non-structural Stormwater treatment practices are encouraged to minimize the reliance on structural practices. Applicants wishing to obtain credit for using non-structural practices must ensure that these practices are documented and will remain unaltered by subsequent property owners by locating the facility in a conservation easement, separate tract dedicated for Stormwater Treatment Facilities or similar instrument as approved by the City Engineer. (Ord. 16-13 § 7, 2016; Ord. 09-25 § 2, 2009.)

17.10.040 Modifications and Appeals to Standard Criteria. The Stormwater Treatment Standards shall be adopted and amended by the City Engineer following a public input process.

A. Redevelopment Projects: The City Engineer may modify or reduce requirements on Redevelopment projects in the City.

B. Modifications to Allow Alternate Compliance: In addition, the City Engineer may waive or modify any of the Stormwater Treatment Standards to encourage the implementation of alternative or innovative practices that implement the intent of the modified standards and provide equivalent public benefits without significant adverse impacts on surrounding Developments. Such modifications may be granted for issues including, but not limited to:

1. Approval of alternate materials, devices, techniques, details or specifications for individual Stormwater Treatment Facilities that would be expected to provide similar or better performance.

2. Evaluations of credits, ratings, or level of service calculations to account for unique or special technical considerations.

3. Corrections, clarifications or modifications to requirements which the City Engineer has found to give inadequate or undesirable performance.

C. Appeals of decisions made by the City Engineer related to the Stormwater Treatment Standards shall be made to the Board of Code Review. (Ord. 09-25 § 2, 2009.)

CHAPTER 17.12

BONDS, MAINTENANCE ASSURANCES, AND STORMWATER PERMITS

Sections:

- 17.12.010 Performance Bond for Completion of Public Stormwater Management Improvements
- 17.12.020 Maintenance Bonds for Public Stormwater Improvements
- 17.12.030 Performance Bonds and Maintenance Bonds for Stormwater Treatment Facilities and Other Private Stormwater Improvements
- 17.12.040 Abatement Bonds
- 17.12.050 Stormwater Permits

17.12.010 Performance Bond for Completion of Public Stormwater Management

Improvements. Upon approval of the final Stormwater Management Plan, but before the issuance of a Land Disturbance Permit, the City Engineer shall require the Applicant to post a performance bond for the amount of the work to be done pursuant to the approved Stormwater Management Plan for Stormwater Treatment Facilities dedicated to the public. (Ord. 16-13 § 9, 2016; Ord. 09-25 § 2, 2009.)

17.12.020 Maintenance Bonds for Public Stormwater Improvements. A two-year maintenance bond against defects in workmanship will be required by the City for any portion of the Stormwater Treatment Facilities dedicated to the public. (Ord. 09-25 § 2, 2009.)

17.12.030 Performance and Maintenance Bonds for Stormwater Treatment Facilities and Other Private Stormwater Improvements.

A. Construction Plan Requirements: The City Engineer shall have the authority to set minimum construction plan submittal requirements by written policy or checklist.

B. Performance Bond Required: The City Engineer shall require the submittal of a performance bond. The amount of the performance bond shall be 1.25 times the total construction cost of the Stormwater Treatment Facilities as estimated by the Developer's engineer and approved by the City Engineer.

Performance Bond Waiver for Single Lot Developments: If Stormwater Treatment Facilities only serve a single building lot and a building is being constructed, a performance bond may be waived by the City Engineer provided all Stormwater Treatment Facilities are constructed and certified prior to issuance of a Certificate of Occupancy as required by the UDO. When seasonal or environmental conditions cause a delay in constructing the Stormwater Treatment Facilities, the City Engineer may approve issuing a Certificate of Occupancy provided a performance bond is posted in accordance with this section.

C. Release of Performance Bond. The performance bond will be released only when all of the following conditions have been met:

1. At least 80% of the land area served by the Stormwater Treatment Facilities has permanent stabilization in place.
2. All of the Stormwater Treatment Facilities covered by the bond have been constructed and certified in accordance with this Chapter.
3. If the Stormwater Treatment Facility is constructed prior to final stabilization of at least 80% of the land area served by the Facility, and the most recent certification of the Facility is more than ninety (90) days old, an updated certification by the City Engineer shall be required to verify that the Facility is fully functional.

D. Maintenance Bond. Prior to issuance of a permit for construction of a Stormwater Treatment Facility, the Developer and/or contractor shall submit a maintenance bond. The Developer and/or contractor shall be responsible for all regular maintenance and repairs to of the Stormwater Treatment Facility while the maintenance bond is in effect including, but not limited to, repairs necessary due to damage caused by intentional or unintentional acts of others. The maintenance bond shall be in the amount of 100% of the construction cost of the Facilities and can be utilized for any maintenance or rehabilitation costs associated with the Stormwater Treatment Facility deemed necessary by the City, including, but not limited to, removal of siltation, mowing, replacement of vegetation, piping repairs, replacement of underdrains, other repairs to the Facility, and any administrative or engineering costs associated with such maintenance and repairs. The maintenance bond shall remain in effect for a period of two (2) years following initial certification of the Stormwater Treatment Facility.

E. Timing of Stormwater Treatment Facility Construction. Stormwater Treatment Facilities shall be constructed as early as feasible during the Development process. However, since some commonly used Stormwater Treatment Facilities are sensitive to construction generated silt when upstream areas are under construction, the following provisions are allowable for timing of such Facility construction:

1. For a Stormwater Treatment Facility serving a single building lot, the Facility shall be constructed concurrently with the Development of the site and building, subject to exceptions set forward in Section 17.12.030 B, paragraph 2, of this Chapter.

2. When Stormwater Treatment Facilities serve multiple Development lots within a common plan of Development, a Stormwater Treatment Facility can be final graded, and permanent vegetation installed only after 80% of the land area served by the Facility has achieved permanent stabilization unless the City Engineer approves a shortened schedule. Additionally, Stormwater Treatment Facilities must be installed and certified within six (6) months of permanent stabilization of the entire land area served by the Facility. Land area served by the Facility shall mean those areas served by the Facility within the common plan of Development and shall not include Off-Site Facilities even if the Off-Site Facilities are Tributary to the Facility.

3. For Stormwater Treatment Facilities serving multiple Development lots within a common plan of Development, no Certificate of Occupancy shall be issued for any building or site unless a Permit has been issued authorizing construction of required Facility to serve the building or site.

F. Failure to Construct a Required Stormwater Treatment Facility: When construction of a Stormwater Treatment Facility is delayed beyond the limits as provided in this Section, the City Engineer may utilize any or all of the following enforcement mechanisms to ensure timely construction of the Facility:

1. Draw upon performance bond funds as necessary to construct the Stormwater Treatment Facility. In the event that the performance bond funds are not adequate to cover all costs associated with construction of said Facility, the City Engineer may assess the property owners for any additional costs in accordance with this Chapter.

2. Withhold issuance of building permits for properties proposed to be served by such Stormwater Treatment Facility.

3. Withhold issuance of Certificates of occupancy for permitted work that is proposed to be served by such Stormwater Treatment Facility.

4. Issue Stop Work Orders for permitted work for any or all property that is proposed to be served by such Stormwater Treatment Facility. (Ord. 09-25 § 2, 2009.)

17.12.040 Abatement Bonds. Prior to approval of a Land Disturbance Permit, the City Engineer shall require a bond, letter of credit, or other appropriate security, approved by the City, to be used to offset the costs of abatement of Erosion and Sedimentation damages both on-site and to downstream property caused by the Land Disturbance, including but not limited to removal of the temporary BMPs and where applicable, their replacement by the final segments of the Storm Sewer System. The bond amount, established and reviewed annually by the City Engineer, shall be based on the estimated cost to the City of providing temporary Erosion Control and establishing Perennial Vegetation on typical project sites, estimated costs to fix Sedimentation damage to downstream properties due to Erosion from the Permitted property. The bond amount will be proportioned based on the acreage of the site. Abatement funds are intended only to ensure corrective measures are taken in the event that BMPs are not maintained or do not perform their intended purpose; the bond does not protect the Permit holder from potential civil suit or other action brought by downstream Property Owners, further regulation by the State, or by federal law. (Ord. 16-13 § 10, 2016; Ord. 09-63 § 1, 2009; Ord. 09-25 § 2, 2009.)

17.12.050 Stormwater Permits. No Person shall receive any Permits for building, grading or other land Development without meeting the requirements of this Title and obtaining a Land Disturbance Permit. Additionally, no Person shall initiate any grading or other Land Disturbance activity without first obtaining a Land Disturbance Permit. Requirements for plans accompanying Permit applications and other related procedures are described in Chapter 17.08 of this Title and Land Disturbance Permit requirements are detailed in Chapter 17.10. Upon approval of the Stormwater management plan, acceptance of the Applicant's assurances of performance and maintenance as provided in these regulations, and payment by the Applicant of the Land Disturbance Permit fee (Permit fees shall be established by resolution of the Governing Body), the City Engineer shall issue a Land Disturbance Permit. The Permit shall set forth the terms and conditions of the approved Stormwater management plan. (Ord. 16-13 § 11, 2016; Ord. 09-25 § 2, 2009.)

CHAPTER 17.14

EROSION AND SEDIMENT CONTROL

Sections:

- 17.14.010 Purpose of Ordinance
- 17.14.020 Administration
- 17.14.030 General Provisions
- 17.14.040 Erosion and Sediment Control Plans
- 17.14.050 Inspection
- 17.14.060 Enforcement
- 17.14.070 Variances
- 17.14.080 Miscellaneous

17.14.010 Purpose of Ordinance. The purpose of this Chapter is to set forth procedures for controlling Erosion and sedimentation caused by Land Disturbance activities, thereby providing for the protection and enhancement of the water quality of Watercourses and Water Bodies. (Ord. 09-25 § 2, 2009.)

17.14.020 Administration.

A. Authority. The City Engineer shall be responsible for the administration and enforcement of this Chapter. The City Engineer shall have the authority to adopt regulations, policies and procedures as necessary for the enforcement of this Chapter. The City Engineer may waive the requirements for maps, plans, reports or drawings, if the City Engineer finds that the information otherwise submitted or to be submitted will be sufficient to show that the proposed work will conform to the requirements of this Chapter.

B. Right of Entry. Whenever the City Engineer has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Chapter, the City Engineer is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this Chapter. If entry is refused, the City Engineer shall have recourse to the remedies provided by law to secure entry.

C. Erosion and Sediment Control Standards. The City Engineer shall adopt and maintain Erosion and Sediment Control Standards to assist in the administration of this Chapter. The Erosion and Sediment Control Standards shall be based on, but not limited to, the following principles:

1. Fit the Development to existing site conditions.
2. Minimize the extent of exposure.
3. Minimize duration of exposure.
4. Break work activities into phases when possible.
5. When possible, protect disturbed areas from any unnecessary run-on of Stormwater from adjacent sites, at least during the construction period.
6. Stabilize disturbed areas.
7. Keep runoff velocities low.
8. Retain Sediment on the site.
9. Inspect and maintain control measures.
10. Use performance measures and outcomes.
11. Timely employment and maintenance of all measures.
12. BMPs as identified by the City Engineer.

D. Time Requirement. Where Land Disturbance activities have temporarily or permanently ceased on a portion of a project site for over twenty-one (21) consecutive days, the disturbed areas shall be protected from Erosion by stabilizing the areas with mulch or other similarly effective soil stabilizing BMPs, unless the timeframe for compliance is extended by the City Engineer. Where implementation of stabilization measures is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

E. Other Pollutants. In addition to Sediment, the Erosion and Sediment Control Plan shall provide for the control of other Pollutants related to the Land Disturbance activity that might cause an adverse impact to water quality, including, but not limited to, discarded building materials, concrete truck washout, fuel, hydraulic fluids, chemicals, litter, and sanitary wastes. (Ord. 09-25 § 2, 2009.)

17.14.030 General Provisions.

A. Any Person undertaking Land Disturbance activities, including the clearing, grading, excavating, filling, storing, and disposing of soil and earth materials, shall comply with the requirements and standards set forth in this Chapter. Permit requirements for Land Disturbance activities are described in Chapter 17.12.

B. Applicability. Regardless of whether or not a Land Disturbance activity requires a Permit, any Person engaged in any Land Disturbance activity shall comply with the spirit and intent of this Chapter. At a minimum, such Persons shall employ BMPs for Erosion and Sediment Control in proportion to the scale of the activity to reduce the amount of Sediment or other Pollutants in Stormwater Discharges associated with those activities.

C. Responsible Person(s). The responsible Person(s) are the Landowner of the property upon which a Land Disturbance takes place and any Person(s) performing a Land Disturbance activity. When a Permit is issued, a 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. (Ord. 09-25 § 2, 2009.)

17.14.040 Erosion and Sediment Control Plans.

A. All proposed Land Disturbance activity that requires a Permit in accordance with Chapter 17.12 of this Title shall be depicted on a site-specific Erosion and Sediment Control Plan. Land Disturbance activities that do not require a Permit in accordance with this Chapter are required to employ applicable BMPs included in standard details provided by the City Engineer. The Erosion and Sediment Control Plan shall be submitted to the City Engineer for review and approval in accordance with the procedure described in Subsection B below. The Plan shall include, at a minimum, the following information:

1. Proposed site map.
2. Limits of areas to be disturbed.
3. Proposed Erosion and Sediment Control BMPs to be employed.
4. Phasing of Erosion and control measures.
5. Final stabilization plan for each phase.
6. Details and specifications for any sections of the final storm sewer system that must be constructed after the removal of BMPs such as temporary Sediment basins.
7. Work schedule.
8. Maintenance and inspection requirements.

The City Engineer may require any additional information or data deemed appropriate to ensure compliance with the intent, purpose and provisions of this Chapter.

B. Review and Approval of Erosion and Sediment Control Plans. The Erosion and Sediment Control Plan shall be of sufficient clarity to indicate the location, manner, nature and extent of the work proposed. The Plan shall clearly show that the proposed work will conform to the provisions of this Title, the Erosion and Sediment Control Standards, and other relevant laws, ordinances, policies, rules and regulations as determined by the City Engineer. The City Engineer shall review the submitted documents to determine compliance with the Erosion and Sediment Control Standards. If the City Engineer finds that the Plan is in compliance with this Chapter, the Applicant shall be eligible to request a Permit. If the City Engineer finds that the Plan is not in compliance before the Plan can be resubmitted to determine compliance with this Chapter, the City Engineer shall advise the Applicant which elements of the Plan are not in compliance.

C. Preparation of Plans. Erosion and Sediment Control Plans submitted to the City for review must be prepared under the supervision of and sealed by a licensed professional engineer or landscape architect or by a Certified Professional in Erosion and Sediment Control (CPESC). The engineer or landscape architect must be licensed to practice in the State. The City Engineer may waive this Plan preparation requirement if the Applicant's Plan consists entirely of utilizing standard plans and specifications as adopted in the City's Erosion and Sediment Control Standards.

D. Amended Plans. Work shall be installed and maintained in accordance with the approved Plan. If Erosion control measures installed per the approved Plan do not function as intended, the Developer and/or contractor may make field adjustments to the Erosion control facilities with the approval of the City's on-site inspector. Significant design modifications that do not conform to the general intent of the approved Plan must be authorized by the City Engineer prior to installation. (Ord. 09-25 § 2, 2009.)

17.14.050 Inspection.

A. Initial Inspection. The Permit holder shall notify the City Engineer 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 approval from the City Engineer that all pre-construction Erosion and Sediment Control measures are correctly installed per the approved Plan. The Contractor shall maintain on the job-site at all times the City-approved Erosion and Sediment Control Plan and the Stormwater Pollution Prevention Plan as approved by the KDHE under the Notice of Intent. Failure to maintain these records on site will be grounds for a Stop Work Order.

B. Maintenance of Control Measures. All prescribed Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times.

C. Routine Inspection. It shall be the duty of the Permit holder to routinely inspect the construction site and maintain effective Erosion and Sediment Control measures. Routine inspections shall be performed once per month or more frequently if required on the Plan and within twenty-four hours following each rainfall event of 1/2" or more within any twenty-four hour period. A log shall be kept of these inspections. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency. Inspection reports shall be kept on site as part of the Stormwater Pollution Prevention Plan and submitted to the City Engineer upon request. The inspection report shall include the following minimum information:

1. Inspector's name.
2. Date of inspection.
3. Observations relative to the effectiveness of the Erosion and Sediment Control measures.
4. Actions necessary to correct deficiencies.
5. Signature of Person performing the inspection.

D. The City Engineer may also perform inspections of the Land Disturbance site to verify compliance with the Erosion and Sediment Control Plan. Should it be found that Erosion and Sediment Control methods are ineffective or are not being maintained properly, the City Engineer may take enforcement actions described within this Chapter.

E. Closure of Land Disturbance Activities. Once the Land Disturbance site is stabilized a final inspection shall be requested by the Applicant. The Land Disturbance site shall be considered stabilized when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover all areas that have been disturbed. Perennial Vegetation shall be considered established and completed for stabilization when it has established a healthy and growing stand with a density of at least 70 percent of undisturbed areas at the site.

F. Removal of Temporary Erosion and Sediment Control Measures. Subsequent to a satisfactory final inspection of the Land Disturbance, all temporary Erosion and Sediment Control measures must be removed and the final segments of the Storm Sewer System shall be constructed in the manner described within the approved plans. Such removal shall be complete prior to closure of the Permit which authorized the Land Disturbance. (Ord. 09-25 § 2, 2009.)

17.14.060 Enforcement.

A. In General. The City Engineer shall enforce the provisions of this Chapter through routine activities that include receiving inspection reports from the Permit holder when requested, inspections, and communication with Developers and/or contractors. However, if these methods fail, the City Engineer may proceed with any or all of the following enforcement measures:

1. Refusal of Inspection. Request for an inspection of any permitted construction activity may be denied if it is found that Erosion and Sediment control measures have not been implemented, are found to be ineffective, or are not maintained. If an inspection is refused, a notice of violation or a Stop Work Order may be issued. No further inspections will be performed until the Erosion and Sediment Control measures have been implemented or violations of the Chapter or the UDO are abated.

2. Notice of Violation. The City Engineer is authorized to serve a notice of violation on any Person found to be doing work in violation of the provisions of this Chapter or the UDO. Such notice shall direct the discontinuance of the illegal action or condition and order the abatement of the violation by the responsible Person.

3. Stop Work Order. The City Engineer is authorized to issue a Stop Work Order for any or all construction activity within the established boundary of the Permit. The Stop Work Order shall be in writing and shall be given to the Property Owner involved, or the Property Owner's agent or to the Person doing the work. In addition, notice of the Stop Work Order shall be posted on the site. Upon issuance of a Stop Work Order, the cited work shall immediately cease. The Stop Work Order shall state the reason for the Order and the conditions under which the cited work will be permitted to resume. Any Person who shall continue to work after having been served with a Stop Work Order, except such work as that Person is directed by the City to perform to remove a violation or unsafe condition, is guilty of a public offense and may be subject to penalties as prescribed in Section 17.02.110.

4. Abatement. Should any Person fail to comply with the provisions of this Chapter, the City Engineer is authorized to correct or abate such violation.

(a) City expenditures to correct or abate a violation shall be assessed as a fee against the Permit holder. The City will keep a record of the abatement costs. The fee shall be paid prior to recommencement of work on the Site and prior to any further inspections. If the fee is not paid within thirty (30) days of the date the invoice is sent to the Permit holder, the City Engineer is authorized, as the City Engineer deems appropriate, to expend additional abatement funds to provide permanent soil stabilization on the site. Such additional expenditures shall also be assessed as a fee against the Permit holder.

(b) Should the Permit become suspended, revoked, or expired with the fee not paid, all City expenditures to correct or abate the violation may be assessed against the abatement bond. Abatement lien and special assessment and collection procedure shall apply if work is done without the issuance of a Permit. The City Clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the county against the lot or parcel of land.

B. Violations and penalties.

1. Any Person who violates a provision of this Chapter, fails to comply with any of the requirements thereof or fails to comply with a directive issued by the City Engineer is guilty of a public offense and shall be subject to penalties as provided in the Section 17.02.110.

2. The City Engineer shall be permitted to cite the Property Owner, or any/all Persons identified on a Permit as being legally responsible to the City for any violations of the Chapter pertaining to that Permit. (Ord. 09-25 § 2, 2009.)

17.14.070 Variances.

A. The City Engineer may grant a variance to the Erosion and Sediment Control Standards, provided all of the following conditions are met:

1. The variance complies with the general spirit and intent of the Erosion and Sediment Control Standards.

2. The granting of the variance will not adversely affect the rights of adjacent Landowners.

3. The granting of the variance will not result in substantial public expense, create nuisances, cause fraud on or cause harm to the public or conflict with existing local, federal or State laws, rules or regulations.

4. The variance will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

B. Appeals of decisions made by the City Engineer related to Erosion and Sediment Control Standards shall be made to the Board of Code Review. (Ord. 09-25 § 2, 2009.)

17.14.080 Miscellaneous

A. Other Laws. Neither this Chapter nor any administrative decision made under this Chapter exempts the Permit holder or any other Person from other requirements of this Title, State and federal laws, or from procuring other required Permits, including any State or federal Stormwater Permits authorized under the NPDES, or limits the right of any Person to maintain, at any time, any appropriate action at law or in equity, for relief or damages against the Permit holder or any Person arising from the activity regulated by this Chapter.

B. Effective Date. The provisions of this Chapter shall apply to all Land Disturbance activities that take place on or after May 1, 2009. (Ord. 09-25 § 2, 2009.)

CHAPTER 17.16

POST-CONSTRUCTION STORMWATER TREATMENT

Sections:

- 17.16.010 Purpose
- 17.16.020 Findings
- 17.16.030 Applicability
- 17.16.040 Performance Criteria
- 17.16.050 Site Location and Placement
- 17.16.060 Deviations
- 17.16.070 Construction Inspections
- 17.16.080 Maintenance and Repair of Facilities
- 17.16.090 Enforcement and Penalties
- 17.16.100 Miscellaneous

17.16.010 Purpose. The purpose of this Chapter is to minimize and prevent the Discharge of Pollutants from developed land into the Surface Waters of the City by establishing reasonable requirements for the treatment of Stormwater runoff from new Development and Redevelopment activities, thereby helping to protect and sustain the City's environmental resources. (Ord. 09-25 § 2, 2009.)

17.16.020 Findings. The Governing Body finds:

A. Land Development and the associated increases in Impervious Cover can increase the quantity and nature of Pollutants carried by Stormwater runoff, increase Stormwater runoff rates and volumes, aggravate Stream Channel Erosion and Sediment transport, alter the hydrologic response of Watersheds, and degrade the ecological function of downstream Water Bodies.

B. Stormwater Treatment Facilities and requirements can minimize those impacts by reducing Pollutant levels carried in Stormwater runoff, removing or reducing the concentrations of those Pollutants that are carried, reducing Stream bank Erosion, and by restoring Stormwater runoff rates and volumes to levels closer to the pre-Development hydrologic regimes. (Ord. 09-25 § 2, 2009.)

17.16.030 Applicability. No land shall be developed without full compliance with this Chapter unless Development occurs as allowed by the following exceptions:

A. Standard Exceptions: Projects meeting any of the following criteria are exempt from the provisions of this Chapter:

1. Land Disturbances of less than one acre that are not part of a common plan for Development that will cumulatively disturb more than one acre.
2. Expansions and modifications to previously constructed Developments otherwise subject to this Chapter where the proposed increase in impervious surface is less than 5,000 square feet.
3. Land Disturbances for linear utility construction and City administered street projects.

Note: the City does not assert jurisdiction under this Chapter over any construction work on State right-of-way.

4. Agricultural land uses.
5. Single lot residential Developments that are not part of a larger common plan for Development.
6. Repairs to any Stormwater Management Facility or practice deemed necessary by the City Engineer.

B. Previously Approved Development Plans: Projects having a preliminary Development plan or Plat or rezoning of a planned district approved prior to adoption of this Title are exempt from the provisions of this Chapter, except as follows:

1. Development plans approved prior to the effective date of this Title may make "substantial or significant changes" as defined in Section 18.12.200 of the UDO until May 1, 2009 without invoking this Chapter. Substantial changes to Development plans after May 1, 2009, must comply with this Chapter in the same manner as a new Development.

2. For Development plan applications submitted prior to the effective date of the Chapter, the application shall obtain final approval prior to May 1, 2009, or it must comply with this Chapter.

C. Redevelopment Projects: Redevelopment plans that disturb less than ten (10) acres and that obtain final approval prior to May 1, 2009, are exempt from provisions of this Chapter. Subsequent substantial changes to such approved plans are subject to the provisions of this Chapter as required under Section 17.16.030 B 1 of this Chapter. (Ord. 09-25 § 2, 2009.)

17.16.040 Performance Criteria. Stormwater Treatment Facilities shall be designed in accordance with the criteria and standards set forth in Chapter 17.10. (Ord. 09-25 § 2, 2009.)

17.16.050 Site Location and Placement. The location of Stormwater Treatment Facilities shall be consistent with their function while also conforming to the uses and constraints of the site. The Facilities' location shall be approved by the City Engineer, and ownership and maintenance responsibility established in accordance with Section 17.16.080. At a minimum, all Stormwater Treatment Facilities will be shown on final construction plans and in the maintenance plan.

A. Centralized and Common Stormwater Treatment Facilities: All centralized and common facilities for Stormwater management will be shown on preliminary Plats, preliminary plans, final plans and final Plats. The perimeter of the Facility shall be documented by a legal boundary description as required by the City Engineer in the form of a separate tract.

B. Distributed Stormwater Treatment Facilities: The City may determine that some distributed Stormwater Treatment Facilities cannot be described practically by separate legal boundaries on plans or Plats. In such circumstances, provisions will be made for maintenance of the Facilities, documentation of their presence, and easements and rights of access, as set forth in Section 17.16.080.

C. Residential Single-Family and Two-Family Areas: Generally, Stormwater Treatment Facilities for residential single-family and two-family Developments shall be centralized and located on a common tract, to be owned and maintained by a homes association.

The City Engineer may allow a limited number of distributed Facilities on individual residential tracts, provided the Applicant demonstrates that substantial provisions are in place to ensure long-term operation, maintenance and inspection of such Facilities without undue burden to the City for tracking or monitoring compliance.

D. Private Facilities in the Public Street Right-of-Way: Privately owned and operated Stormwater Treatment Facilities shall be located outside of the public street right-of-way unless approved in writing by the City Engineer and a corresponding right-of-way Maintenance Agreement shall be recorded that provides for private maintenance responsibility in the public street right-of-way.

E. Coordination with Utility Easements: Stormwater Treatment Facilities shall not be co-located within utility easements unless approved by the City Engineer.

F. Detention Ponds: When Detention facilities for peak flood control are required under the provisions of Chapter 17.10, such Facilities may be co-located with Stormwater Treatment Facilities, provided that the Facilities are designed to meet the requirements of both uses.

G. Off-Site Facilities: The City Engineer may consider proposals to manage Stormwater runoff in Off-Site Facilities that treat runoff from the proposed Development and comply with the Stormwater Treatment Standards. The Off-Site Facility shall be in place prior to or concurrently with the proposed Development. Long-term operations and maintenance responsibilities for the Facilities must be established by legal agreements, approved by the City and recorded with Johnson County, Kansas Records and Tax Administration.

H. Stream Corridors as required in Chapter 17.06 of this Title are considered a beneficial Stormwater Treatment Facility, therefore credit will be granted by the Stormwater Treatment Standards. In limited circumstances, which are specifically included in the Stormwater Treatment Standards, the outer one-third (1/3) of the designated Stream Corridor may incorporate additional features which enhance the Corridor's Stormwater treatment function. Such Facilities must be consistent with the long-term integrity of the Stream Corridor as a natural, riparian zone. (Ord. 09-25 § 2, 2009.)

17.16.060 Deviations.

A. The City Engineer may approve deviations from the specific terms of this Chapter which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship for the Applicant, and provided that the spirit of this Chapter shall be observed, the public safety and welfare secured and substantial justice done for the Applicants.

B. An application for a deviation may only be granted upon a finding that all of the following conditions have been met:

1. The granting of the deviation will not adversely affect the rights of adjacent Landowners.

2. The strict application of the provisions of this Chapter would constitute unnecessary hardship upon the Landowner represented in the application.

3. The deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

4. Granting the deviation will comply with the general spirit and intent of this Chapter.

5. It has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or State laws.

6. Upon consideration of the factors listed above and the purposes of this Chapter, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter.

C. In considering deviation applications, the City Engineer has the discretion of using any or all of the following project evaluations when, in the judgment of the City Engineer, these evaluations are relevant and appropriate.

1. That alternative standards for stormwater management, water quality protection, and ecological preservation have been established, and/or that mitigation measures are undertaken.

2. That existing physical or natural characteristics of the site make strict application of the Chapter infeasible.

3. That concerns for flooding, Stream bank Erosion, Stream instability, and maintenance of culverts, bridges or other structures are addressed.

4. That the deviation is the minimum necessary to afford relief.
5. No individual or combination of evaluations are necessarily required for an application to be approved and the City Engineer may weigh these evaluations in light of all relevant considerations in determining whether or not to approve an application. (Ord. 09-25 § 2, 2009.)

17.16.070 Construction Inspections.

A. Inspections: Regular inspections of the Stormwater Management System construction shall be the responsibility of the Developer’s engineer or other Property Owner’s representative who has been approved by the City Engineer and inspection results forwarded to the City. For certain types and locations of Stormwater Treatment Facilities, the City Engineer may at her/his discretion require additional or parallel inspections by City staff.

B. As-Built Plans: All Applicants are required to submit actual "as-built" plans for any constructed Stormwater Treatment Practices. The plan must show the final design specifications for all Stormwater Treatment Facilities and must be certified by the Developer’s engineer. A final inspection by the City is required before the release of any performance bonds can occur. The City Engineer will determine required elements of the as-built plans.

C. Post Construction Certification: Prior to refunding of performance bonds, the Developer’s engineer, or other party approved by the City Engineer, must certify that the Stormwater Treatment Facility is fully functional and has been installed in accordance with the approved plans. For Developments not requiring a performance bond, the certification shall be made prior to issuance of a Certificate of Occupancy. (Ord. 09-25 § 2, 2009.)

17.16.080 Maintenance and Repair of Facilities.

A. Required Maintenance Agreement: Prior to issuance of any Permit that includes construction of a Stormwater Treatment Facility, the Applicant or Property Owner of the site shall provide a Maintenance Agreement for approval by the City Engineer. At a minimum, the Maintenance Agreement shall:

1. Identify the responsible party for maintaining all Stormwater Treatment Facilities.
2. Include an attachment showing the locations of all Stormwater Treatment Facilities.
3. Provide access easements reserved for the responsible party to access and maintain all Stormwater Treatment Facilities, as well as right of access to the City as provided in other sections of this Chapter.
4. Establish minimum frequency and levels of maintenance and inspections to be done. Identify and itemize anticipated annual maintenance expenditures that will be required during each of the first five (5) years of operation after termination of the contractor maintenance period, so that the responsible party may better plan for future maintenance costs.
5. Identify resources available to provide maintenance.
6. Identify prohibited practices and homes and/or business association enforcement process for restoration.
7. Identify the City’s rights in the event that the responsible party fails to or is unable to perform any of the obligations of the Maintenance Agreement.
8. Clarify how modifications or additions can be made to the Maintenance Agreement.
9. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain Stormwater Treatment Facilities if the responsible party fails to or is unable to perform any of the obligations in the Maintenance Agreement.

B. Formation of Homes or Business Association: The Property Owner or Developer shall form a homes or business association prior to the sale of any lots, and the homes or business association covenants shall include, or reference, the provisions of the approved Maintenance Agreement. The homes association or business association covenants shall include provisions collecting maintenance costs for Stormwater Treatment Facilities.

C. Notice on Plat or Title: The final Plat and homes or business association deed restrictions shall contain language approved by the City Engineer to provide notice of facility presence and maintenance obligations. Said deed restriction shall be recorded with the Johnson County, Kansas Records and Tax Administration concurrent or prior to recording of the final plat or approval of final plans. The notice shall run with the land and failure to provide this notice to any purchaser prior to transferring any interest in the property shall be in violation of this Chapter and State law. The notice shall be in a form approved by the City Engineer and substantially as set forth below:

"Notice: This site includes Stormwater Treatment Facilities, as defined and regulated in the Olathe Municipal Code. Restrictions on the use or alteration of the said Facilities may apply. This property is also subject to the obligations and requirements of the Stormwater Treatment Facility Maintenance Agreement approved by the City."

When the proposal involves a final Plat, this notice shall appear on the face of the Plat, as recorded. When the proposals do not involve a final Plat, the notice shall be in the form of a notice of presence recorded with the Johnson County, Kansas Records and Tax Administration, and the notice shall include the legal description of the property, the current Property Owner, the application date and other reference to the project, and the notarized signature of the Property Owner or Owners.

D. City Inspection of Stormwater Treatment Facilities: The City shall establish an inspection program, including but not limited to: routine inspections, random inspections, inspections based upon complaints or other notice of possible violations, inspection of drainage basins or areas identified as higher than typical sources of Sediment or other contaminants or pollutants, inspections of businesses or industries of a type associated with higher than usual Discharges of contaminants or pollutants or with Discharges of a type which are more likely than the typical Discharge to cause violations of State or federal water or Sediment quality standards or the NPDES Stormwater Permit, and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records, sampling Discharges, Surface Water, groundwater, and material or water in drainage control facilities, and evaluating the condition of drainage control facilities and other Stormwater Treatment practices.

E. Right of Entry for Inspection: When any Stormwater Treatment Facility is installed on private property, or when any new connection is made between private property and a public storm sewer system, the Property Owner shall grant to the City in a manner and form acceptable to the City Engineer, the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when the City Engineer has a reasonable basis to believe that a violation of this Title is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this Title.

F. Records of Installation and Maintenance Activities: Parties responsible for the operation and maintenance of a Stormwater Treatment Facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the City Engineer during inspection of the Facility and at other reasonable times upon request.

G. Failure to Maintain Practices: If a responsible party fails to or refuses to meet the requirements of the Maintenance Agreement, the City Engineer, after reasonable notice, may correct a violation of the Standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the Stormwater Treatment Facility becomes a danger to public safety or public health, the City Engineer shall notify the party responsible for maintenance of the Stormwater Treatment Facility in writing. Upon receipt of that notice, the responsible Person shall have thirty (30) days to affect maintenance and repair of the Facility in an approved manner. In the event of an emergency, when the City Engineer determines that the Facility poses an immediate danger to life or property, no notification period shall be required prior to beginning mitigation work. After proper notice, the City Engineer will enforce the maintenance provisions of this Chapter with any or all of the following enforcement measures:

1. Notice of Violation: The City Engineer is authorized to serve a notice of violation or order on any Person or entity responsible for maintaining the Facility. Such notice shall order abatement of the violation by the responsible Person or entity.

2. Lien on Property: The City Engineer may assess the Property Owner(s) of the Facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the County after compliance with KSA 12-1617e. (Ord. 09-25 § 2, 2009.)

17.16.090 Enforcement and Penalties.

A. Violations: Any Person or entity violating any provision of this Chapter is guilty of a public offense and shall be subject to penalties as provided in Section 17.02.110 of this Title. The City Engineer shall be permitted to cite the Property Owner, or any/all Persons identified on the Permit as being legally responsible to the City for any violations of this Chapter pertaining to that Permit.

B. Restoration of Lands: Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City Engineer may take necessary corrective action, of which the cost to the City shall become a lien upon the property until paid. (Ord. 09-25 § 2, 2009.)

17.16.100 Miscellaneous.

A. Compatibility with Other Permit and Title Requirements: This Chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

B. Authority: The City Engineer shall be responsible for the administration and enforcement of this Chapter. The City Engineer shall have the authority to adopt regulations, policies and procedures as necessary for the enforcement of this Chapter. (Ord. 09-25 § 2, 2009.)

CHAPTER 17.18

STORMWATER POLLUTION PREVENTION – ILLICIT DISCHARGES

Sections:

- 17.18.010 Title
- 17.18.020 Purpose
- 17.18.030 Findings
- 17.18.040 General Prohibition
- 17.18.050 Specific Prohibitions and Duties
- 17.18.060 Inspection and Detection Program
- 17.18.070 Release Reporting and Clean-up
- 17.18.080 Enforcement; Designation of Officer; Abatement; Right of Entry; Penalty

17.18.010 Title. These regulations shall hereafter be known as the Stormwater Pollution Prevention Act (“Act”). (Ord. 09-25 § 2, 2009.)

17.18.020 Purpose. The purpose of this Act shall be to prevent the Illicit Discharge of non-Stormwater Pollutants from land and activities within the City into the Municipal Separate Storm Sewer System (MS4) and/or into surface waters.

Note: that non-point source Stormwater pollution prevention is regulated under Chapters 17.16 “Post-Construction Stormwater Treatment” and 17.14 “Erosion and Sediment Control.” (Ord. 09-25 § 2, 2009.)

17.18.030 Findings. The Governing Body of the City hereby finds:

- A. Pollutants are Discharged into surface waters, both through inappropriate non-Stormwater Discharges into the MS4 or the Surface Waters directly, and through the wash off and transport of Pollutants found on the land and built surfaces by Stormwater during rainfall events;
- B. Such Discharge of Pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry and may damage the natural ecosystems of Water Bodies, leading to a decline in the diversity and abundance of plants and animals;
- C. This Chapter will promote public awareness of the hazards involved in the improper Discharge of trash, yard waste, lawn chemicals, pet waste, Wastewater, Oil, Petroleum Products, cleaning products, paint products, Hazardous Waste, Sediment and other Pollutants into the MS4.
- D. Such Discharges are inconsistent with the provisions and goals of the Clean Water Act, the NPDES, and other federal and State requirements for water quality and environmental preservation; and
- E. A reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize such Discharges of Pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program. (Ord. 09-25 § 2, 2009.)

17.18.040 General Prohibition.

- A. No Person shall release or cause to be released into the MS4, or into any Surface Water within the City, any Discharge that is not composed entirely of Stormwater that is free of pollutants, except as allowed in Subsection B.

B. Unless identified by the City or KDHE as a significant source of Pollutants to Surface Water the following non-Stormwater Discharges are deemed acceptable and not a violation of this section:

1. Water line flushing;
2. Diverted stream flow;
3. Rising groundwater;
4. Uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
5. Uncontaminated pumped groundwater;
6. Contaminated groundwater if authorized by KDHE and approved by the municipality;
7. Discharges from potable water sources;
8. Foundation drains;
9. Air conditioning condensate;
10. Irrigation waters;
11. Springs;
12. Water from crawl space pumps;
13. Footing drains;
14. Individual residential Car washing;
15. Flows from riparian habitats and wetlands;
16. De-chlorinated swimming pool Discharges excluding filter backwash;
17. Street wash waters (excluding street sweepings which have been removed from the street);
18. Discharges or flows from emergency fire fighting activities;
19. Heat pump Discharge waters (residential only);
20. Treated wastewater or other Discharges meeting requirements of a NPDES permit; and
21. Other Discharges determined not to be a significant source of pollutants to waters of the State, a public health hazard or a nuisance.

C. Discharges specified in writing by the City Engineer as being necessary to protect public health and safety.

D. Notwithstanding the provisions of Subsection B of this section, any Discharge shall be prohibited by this section if the Discharge in question has been determined by the City Engineer to be a source of a Pollutants to the MS4 or to Surface Waters, written notice of such determination has been provided to the Property Owner or Person responsible for such Discharge, and the Discharge has occurred more than ten (10) days beyond such notice. (Ord. 09-25 § 2, 2009.)

17.18.050 Specific Prohibitions and Duties. The specific prohibitions and requirements in this section are not inclusive of all the Discharges prohibited by the general prohibition in Section 17.18.030, but are provided to address specific Discharges that are frequently found or are known to occur:

A. No Person shall release or allow to be released any of the following substances into the MS4:

1. Any new or used, motor Oil, antifreeze, Petroleum Product or Waste;
2. Any industrial Waste;
3. Any Hazardous Substance or Hazardous Waste, including Household Hazardous Waste;
4. Any Domestic Sewage or Septic Tank Waste, grease trap or grease interceptor Waste, holding tank Waste, or grit trap Waste;
5. Any garbage, rubbish or other Waste;

6. Any new or used paints, including latex-based paints, Oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;
7. Any yard Wastes which have been moved or gathered by a Person;
8. Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;
9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;
10. Any wastewater from commercial floor, rug, or carpet cleaning;
11. Any wastewater from the washdown or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other release of Oil, motor fuel, or other Petroleum Product or Hazardous Substance has occurred, unless all such materials have been previously removed;
12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or Discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
14. Any runoff, washdown water or Waste from any animal pen, kennel, fowl or livestock containment area or any pet Wastes generally;
15. Any filter backwash from a swimming pool or fountain, except that nothing in this Chapter shall be construed as to require the alteration of the filter Discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable State, federal, and local regulations at the time of construction;
16. Any swimming pool, fountain or spa water containing a harmful level (as set forth by current State regulations for maximum residual disinfection levels) of chlorine, muriatic acid, or other chemical used in the treatment or disinfection of the water or during cleaning of the facility;
17. Any Discharge from water line disinfection that exceeds the current maximum residual disinfection levels set forth by the State at the point of entry into the MS4 or Surface Waters;
18. Any contaminated runoff from a vehicle wrecking or storage yard;
19. Any substance or material that will damage, block, or clog the MS4;
20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any Discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the Discharge has received an NPDES permit from the State;
21. Any other Discharge that causes or contributes to causing the City to violate a State water quality standard, the City's NPDES Stormwater permit, or any State-issued Discharge permit for Discharges from its MS4.

B. No Person shall introduce or cause to be introduced into the MS4 any harmful quantity of Sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing Erosion and Sediment Control measures, except as allowed for in conformance with Chapter 17.14 of the Olathe Municipal Code.

C. No Person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No Property Owner shall allow such a connection to continue in use on their property.

D. No Person shall use Pesticides, herbicides and Fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides and Fertilizers shall be stored transported and disposed of in a manner to prevent release to the MS4.

E. No Person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing Pollutant Discharges, nor shall any Person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, State, or federal jurisdictions. (Ord. 09-25 § 2, 2009.)

17.18.060 Inspection and Detection Program. The City Engineer is authorized to develop and implement a plan to actively detect and eliminate prohibited Discharges and connections to the MS4 or Surface Waters within the City. Such plan may include, but is not limited to, periodic and random inspections of buildings and businesses, particularly those most associated with potentially prohibited Discharges; visual surveys of exterior practices; inspection, sampling and analyses of Discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace Discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected Discharges. (Ord. 09-25 § 2, 2009.)

17.18.070 Release Reporting and Clean-up.

A. Any Person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or Surface Waters shall take all necessary steps to ensure the containment and clean-up of such release.

B. In the event of such a release of Hazardous Substances said Person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

C. In the event of a release of non-Hazardous Substances, said Person shall notify the City Engineer in-person or by phone or facsimile no later than the next business day. Notifications in-person or by phone shall be confirmed by written notice addressed and mailed to the City Engineer within three (3) business days of the phone notice. (Ord. 09-25 § 2, 2009.)

17.18.080 Enforcement; Designation of Officer; Abatement; Right of Entry; Penalty. The City Engineer shall be designated as the public officer charged with the administration and enforcement of this Act. The City Engineer shall authorize the investigation of violations of the Act. If it is determined that a violation of this Act exists, then the City Engineer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in Chapter 17.02. (Ord. 09-25 § 2, 2009.)