
Secs. 8-620—8-629. Reserved.

ARTICLE XV. POST-CONSTRUCTION STORMWATER TREATMENT¹⁵

Sec. 8-630. General provisions.

(a) *Finding of facts.*

(1) It is hereby determined that:

- a. Land development projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition.
- b. This stormwater runoff contributes to increased quantities of water-borne pollutants, and stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from development sites.
- c. Therefore, the unified government establishes this set of water quality and quantity policies applicable to all surface waters to provide reasonable guidance for the regulation of stormwater runoff for the purpose of protecting local water resources from degradation. It is determined that the regulation of stormwater runoff discharges from land development projects and other construction activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will prevent threats to public health and safety.

(b) *Purpose.*

- (1) The Congress of the United States has amended the Clean Water Act of 1972 to reduce pollutants discharged into the waters of the United States by extending the National Pollution Discharge Elimination System (NPDES) requirements to regulate stormwater discharge from land disturbance and construction activities into the unified government's stormwater drainage systems. The unified government is subject to the NPDES requirements of federal law as an operator of a MS4, and the unified government is therefore obligated by federal law to develop, implement, and enforce minimum stormwater treatment standards in compliance with the unified government's Kansas Water Pollution Control General Municipal Separate Storm Sewer System (MS4) Permit.
- (2) The purpose of the article is to protect and further the public interest by promoting the coexistence of the natural environment and quality, planned development; assisting the unified government's efforts to comply with the National Pollutant Discharge Elimination System (NPDES) regulations issued by the Environmental Protection Agency and administered by the state department of health and environment; providing effective stormwater management; improving water quality and reducing water pollution; limiting the impacts on stormwater from land development; preventing prohibited discharges from entering into the municipal separate storm sewer system; protecting natural stream assets; and protecting and, where possible, enhancing valuable natural water resources. These public interests are furthered by regulating stormwater discharges from development or redevelopment of

¹⁵Editor's note(s)—Ord. No. O-81-21 , § 2, adopted June 24, 2021, repealed the former Art. XV, §§ 8-630—8-640, and enacted a new Art. XV as set out herein. The former Art. XV pertained to similar subject matter and derived from Ord. No. O-25-10, § 1, adopted May 6, 2010; and Ord. No. O-27-14, § 2, adopted April 10, 2014.

land. It is also the purpose of this article to encourage responsible development and minimize the costs of development.

- (3) This article establishes substantive and procedural requirements to protect and enhance the water quality of watercourses, water bodies, and wetlands by removing pollutants from the stormwater runoff generated by development or redevelopment projects.
- (4) This article establishes minimum requirements for post-construction stormwater treatment on any new development or redevelopment of land.
- (5) This article establishes registration, maintenance and reporting requirements on any owner of any private stormwater treatment facility.

(c) *Applicability.*

- (1) Persons undertaking development or redevelopment of land located within the limits of the City of Kansas City, Kansas shall provide stormwater treatment as provided in this article.
- (2) Owners of stormwater treatment facilities located within the limits of the City of Kansas City, Kansas shall register their facilities with the county engineer, shall regularly inspect and maintain their facilities, and shall report inspection results and maintenance activities all as provided in this article.
- (3) The supplemental regulations and stormwater treatment standards authorized by this article shall further define exceptions for agricultural, redevelopment, remodeling, grounds maintenance, and redevelopment activities and projects.
- (4) This article shall apply to all development or redevelopment that is located within the limits of the City of Kansas City, Kansas.
- (5) Standard exceptions for stormwater treatment facilities designed to treat pollutants and not solely for volume or peak discharge reduction are as follows:
 - a. Any site that disturbs less than one acre of ground and is not part of a larger common plan of development or sale that would cumulatively exceed the one-acre limit. The unified government does, however, reserve the right to require the treatment of the cumulative area of land disturbance (for those incremental disturbances of less than one acre each) that has occurred since adoption of this article once the cumulative land disturbance for a particular tract has exceeded the one-acre threshold.
 - b. Any development that has a construction start date earlier than October 1, 2010 and does not experience a pause in construction for a period of more than 30 days after October 1, 2010.
 - c. Any site that makes application for preliminary plat or preliminary development plan prior to the publication date of this article and receives approval of a final development plan or final plat prior to September 1, 2010 and has completed all proposed improvements within two years of the date of approval.
 - d. Expansion or modifications to previously constructed developments otherwise subject to this chapter where the proposed increase in impervious surface is less than 5,000 square feet. The unified government does, however, reserve the right to require the treatment of the cumulative area of impervious surface increase (for those incremental increases of less than 5,000 square feet each) that has occurred since adoption of this article once the cumulative increase in impervious surface for a particular tract has exceeded the 5,000 square feet increase in impervious surface threshold.
 - e. Land disturbances for linear utility construction.
 - f. Agricultural land uses.

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- g. Single lot residential developments that are not part of a larger common plan of development or are located in a subdivision served by a stormwater management facility that is/was designed, adequately sized, constructed and maintained to achieve or exceed the performance criteria requirements of this article for the subdivision in its fully developed condition.
 - h. Repairs to any stormwater treatment facility or practice deemed necessary by the county engineer.
- (6) Previously approved development plans. Projects having a preliminary development plan (including preliminary plans approved with an accompanying rezoning or special use permit), preliminary plat, or site plan (for conventional zoning districts only) that had a final approval by the governing body, the planning commission, or the planning and development services department prior to adoption of this article are exempt from the provisions of this chapter, but said developments remain subject to the previous version of this article. "Substantial or significant changes" to development plans after June 1, 2021, must comply with this article in the same manner as a new development.
 - (7) Unified government administered street construction. Street and thoroughfare construction projects administered and constructed by the unified government shall comply with this article, except that compliance is not required for street and thoroughfare construction that:
 - a. Disturbs less than one acre of ground and would be exempt under the standard exceptions set out in section 8-620(c)(5)(a) above; or
 - b. Will maintain, enhance, or reconstruct existing roadways, including safety improvements such as intersection improvements, turn lane additions, and new entrances, but which will not add additional through lanes.
 - (8) Unless subject to another agreement, stormwater treatment facilities installed as part of unified government administered projects are owned and maintained by the unified government.
 - (9) State rights-of-way. The unified government does not assert jurisdiction under this article over any construction work on State of Kansas rights-of-way.
 - (10) In the process of adopting supplemental regulations authorized by this article, the county engineer may provide other exceptions to this article.
- (d) *Compatibility, severability and authority.*
- (1) This article 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 article should be considered minimum requirements, and where any provision of this article 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.
 - (2) If the provisions of any article, section, subsection, paragraph, subdivision or clause of this article shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this article.
 - (3) The county engineer is the principal unified government official responsible for administration and enforcement of this article and its requirements. The county engineer shall have the authority to adopt policies, procedures, and guidance documents as necessary for the interpretation and enforcement of this article and its requirements. The county engineer may delegate any or all of his or her duties under this article.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-631. Definitions.

In this article, these words and phrases have the following meanings:

As-built plan means a record drawing or plan prepared and certified by a professional engineer that represents the actual dimensions, contours, elevations, design calculations, etc., of a completed structure, facility, or constructed feature.

Best management practice (BMP) means the stormwater management practice used to prevent or control the discharge of pollutants, including sediment, and minimize runoff, both directly and indirectly, to stormwater, receiving waters, or stormwater drainage systems, waters of the U.S. or water body found in the unified government. BMPs may include structural or nonstructural solutions, a schedule of activities, prohibition of practices, maintenance procedures, or other management practices and programs.

Channel means a natural or artificial watercourse with defined bed and banks that conducts continuously or periodically flowing water.

City means all of the territory of Wyandotte County, except the territory of the cities of Bonner Springs, Edwardsville, and Lake Quivira and the unincorporated area of Wyandotte County.

County administrator means the individual appointed by the mayor/CEO of the unified government with the consent of the commission as the unified government county administrator or his/her designee.

County engineer means the individual appointed by the county administrator as the unified government county engineer or his/her designee.

Dedicate means the deliberate appropriation of property by its owner for general public use.

Developer means any person who owns a development or redevelopment site, or who authorizes, plans, undertakes, executes, or is otherwise directly responsible for development or redevelopment to occur on a given parcel.

Development or redevelopment means any human activity that alters the elevation, cover or other hydrologic feature of the land. Such activities include but are not limited to the subdivision of land and the addition or alteration of improvements such as cuts and fills, drainage alterations, utilities, buildings, pavements, landscape, and any combination of these elements. Also, the project, lot, parcel or tract or land where development or redevelopment occurs.

Development site means any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under one ownership on which development or redevelopment of land occurs after the effective date of this article.

Drainage easement means a legal right granted by a property owner to a grantee allowing the use of private land for stormwater management purposes.

Erosion means the process by which the ground surface is worn away by the action of the wind, water, ice, gravity, or artificial means, and/or land disturbance activities.

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

Land disturbance means any activity by which soil is moved and land changed that may result in erosion or the movement of sediments, and may include tilling, clearing, grading, excavating, stripping, stockpiling, filling and related activities, and the covering of land surfaces with an impermeable material.

Landscape architect means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice landscape architecture.

Maintenance agreement means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater treatment facilities.

Municipal separate storm sewer system (MS4) or public storm sewers means the publicly maintained stormwater drainage system within the unified government, including all appurtenances and ancillary structures thereto, any conveyance or system of conveyances for stormwater, including road drainage systems, streets, catch basins, detention 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 C.F.R. 122.26, or amendments thereto.

Person means any natural or corporate person, business association or business entity including, but not limited to, a corporation, a partnership, a sole proprietorship, trust, a political subdivision, a public or private agency of any kind, a utility, an owners association, a successor or assign of any of the foregoing, or any combination thereof.

Pollutant means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of water, including changes in temperature, taste, odor, turbidity, or color.

Pollution prevention plan means BMPs and other structural, procedural and operations and maintenance provisions designed and operated to reduce or eliminate the discharge of pollutants, particularly in stormwater runoff.

Previously constructed development means all buildings, parking, sidewalks, and other impervious surfaces that currently exist on a site that were built in accordance with an approved development plan.

Professional engineer means an engineer duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice engineering.

Property owner means the person listed as owner of the property by the county Wyandotte County Register of Deeds.

Stop work order means an order issued which requires that all construction activity on a site be stopped.

Stormwater means surface flow resulting from any form of natural precipitation, also any discharge to the public storm sewer allowed under the unified government's NPDES stormwater discharge permit.

Stormwater treatment facility (STF) means any constructed facility, or designated natural or restored open space, designed either to reduce the pollution load of stormwater, or to reduce the peak flow or volume of stormwater, or both.

Stormwater treatment facility owner means the person who controls, possesses, or takes stewardship of a stormwater treatment facility, which is planned and constructed in order to meet the requirements of this section.

Stormwater treatment standards or standards means the detailed design criteria, construction specifications, standard details, and maintenance requirements adopted in writing by the county engineer.

Unified government means the unified government of Wyandotte County/Kansas City, Kansas.

Watercourse means any natural or artificial path for the concentrated flow of storm water or surface water, including but not limited to streams, rivers, creeks, ditches, channels, canals, conduits, culverts, drains, swales, waterways, gullies, ravines, or washes, including any area adjacent to it that is subject to overflow of floodwater.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-632. Performance criteria.

- (a) *Stormwater treatment standards (standards)*. The county engineer shall adopt and maintain stormwater treatment standards to implement and interpret the provisions of this article. The additional guidance or

exceptions/waivers may include, but not be limited to, modified best management practices, design criteria, construction specifications, or standard details. Copies of all adopted standards shall be on file and available in the office of the county engineer and shall include the following:

- (1) Supplemental regulations necessary to implement this article including the authorization to establish, assess, and amend administrative fees;
 - (2) Post-construction stormwater treatment for developed sites;
 - (3) Inspection and maintenance of stormwater treatment facilities;
 - (4) Creation and update of a registry of all stormwater treatment facilities required by this article; and
 - (5) All stormwater treatment facilities required or constructed within the unified government shall be designed and constructed in accordance with the most-recent standards set forth above and in the office of the county engineer. If hydrologic or topographic conditions warrant greater control than provided by the minimum control requirements set forth, the county engineer may impose additional requirements deemed necessary to control the pollutants in stormwater runoff. It shall be unlawful for any person to fail to comply with any additional requirements imposed by the county engineer as necessary to control the pollutants.
- (b) *Minimum control requirements.* All stormwater treatment facilities shall be designed to provide a combination of pollutant removal, water volume, and peak flow control that satisfies the requirements established by unified government, 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 or owner of the site wishing to utilize non-structural practices for the purpose of meeting the requirements established by the unified government must ensure that these practices are documented and will remain unaltered by subsequent property owners by locating the facility in a drainage easement, separate tract dedicated for stormwater treatment facilities or similar instrument as approved by the county engineer.
- (d) *Modifications to allow alternate compliance.* In addition, the county 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 properties or 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 or any requirements established by the unified government to account for unique or special technical considerations; or
 - (3) Corrections, clarifications or modifications to requirements which the county engineer has found to give inadequate or undesirable performance.
- (e) Appeals of decisions made by the county engineer related to the standards shall be made in accordance with section 8-643.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-633. Site location and placement.

- (a) The location of stormwater treatment facilities shall be consistent with their function while also conforming to the uses and constraints of the site. The facility locations shall be approved by the county engineer, and

ownership and maintenance responsibility established. Stormwater treatment facilities shall be shown on all relevant documents detailed in section 8-634(a).

- (1) *Regional stormwater treatment facilities.* Regional facilities for stormwater management shall be shown on preliminary and final plans. The perimeter of the facility shall be dimensioned on a plan provided as an attachment to the maintenance agreement. Provisions shall be made for maintenance of the facilities, documentation of their presence, and rights of access, as set forth in section 8-638.
- (2) *Local stormwater treatment facilities.* Local stormwater treatment facilities shall be dimensioned on a plan provided as an attachment to the maintenance agreement. Provisions shall be made for maintenance of the facilities, documentation of their presence, and rights of access, as set forth in section 8-638.
- (3) *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.
 - a. The county engineer may allow a limited number of distributed facilities on individual residential tracts, provided the applicant or owner of the site demonstrates that substantial provisions are in place to ensure long-term operation, maintenance and inspection of such facilities without undue burden to the unified government staff for tracking and monitoring compliance.
- (4) *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 county engineer and a corresponding right-of-way agreement which shall be recorded that provides for private maintenance responsibility in the public street right-of-way.
- (5) *Coordination with utility easements.* Stormwater treatment facilities shall not be co-located within utility easements unless approved by the county engineer.
- (6) *Detention ponds.* When detention facilities for peak flood control are required under the public works and stormwater treatment standards, such basins may be co-located with stormwater treatment facilities, provided that the facilities are designed to meet the requirements of both uses.
- (7) *Off-site facilities.* The county 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 agreements, approved by the unified government, and recorded with Wyandotte County Register of Deeds.
- (8) *Existing stream corridors.* Existing stream corridors are considered a beneficial stormwater treatment facility and will be evaluated based on the requirements established by the unified government.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-634. Stormwater treatment facility plan and report requirements.

- (a) *Developer to prepare stormwater treatment facility plan.* In conjunction with final development plan, final plat, building permit applications, and other building or land development applications as may be identified in the supplemental regulations, the developer shall submit a preliminary stormwater treatment plan and stormwater management report. The plan shall consist of construction drawings for stormwater treatment facilities that meet the requirements of the design criteria, a construction sequence for protection of the

stormwater treatment facilities from construction phase sedimentation, a projected maintenance plan, agreement and schedule, and a pollution prevention plan.

- (b) The final stormwater management plans are required to be incorporated into the public improvement plans and/or site development plans for the project and prepared in accordance with the unified government design criteria and this article. In addition, a final drainage report is required to be submitted concurrently with the plans and shall include detailed information for each stormwater treatment facility within the development as required by the stormwater treatment standards.
- (1) The county engineer shall have the authority to set minimum plan and report submittal requirements by written policy or checklist.
 - (2) Both the plans and report require review and acceptance by the county engineer prior to a building permit and/or public improvement permit being issued for the development.
 - (3) Following initial acceptance of the plans and report by the county engineer, the developer can make revisions to both the plans and report only with written approval of the county engineer.
 - a. Revised plans and reports must be submitted to the county engineer for review and written acceptance prior to any changes being made to the existing plans and reports previously approved by the county engineer.
 - b. Revised plans and reports must be prepared by a professional engineer unless another design individual is first approved in writing by the county engineer.
 - (4) *No separate permit.* The county engineer shall review and approve the stormwater treatment plan. Review, approval, construction inspection, and maintenance agreement for the stormwater treatment facilities shall be an integral part of the performance required under previously adopted or subsequently amended unified government regulation of buildings and development. A separate permit or bond for construction of the stormwater treatment facility is not required.
 - (5) *Developer to construct.* The developer shall construct the stormwater treatment facilities according to the approved plan and the adopted stormwater treatment standards.
 - (6) *Prevent damage from construction phase sediment.* Developer shall manage the construction sequence to protect the stormwater treatment facilities from construction phase sedimentation.
 - (7) *Prevent damage/compaction from construction equipment.* Developer shall manage and protect areas where stormwater treatment facilities are proposed to be located to prevent soil compaction.
- (c) *Design certification.* Prior to commencing construction of a stormwater treatment facility on projects that do not require a development review committee (DRC) process/approval including necessary rehabilitations of stormwater treatment facilities, a professional engineer shall submit a certification stating that the plans, report, and specifications for constructing required stormwater treatment facilities are in conformance with this chapter and the unified government design criteria.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-635. Procedures.

- (a) *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:

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- (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 this section.
 - (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 90 percent of the land area served by the facility has achieved permanent stabilization unless the county engineer approves a shortened schedule. Additionally, stormwater treatment facilities must be installed and certified within six 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 offsite areas even if they are tributary to the facility.
 - (3) For stormwater treatment facilities serving multiple development lots within a common plan of development, no certificate of occupancy and/or temporary certificates of occupancy shall be issued for any building or site unless a stormwater treatment facility has received a post construction certification per section 8-637(a)(1).
- (b) *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 county engineer may utilize any or all of the following enforcement mechanisms:
- (1) Withhold issuance of building permits for properties proposed to be served by such stormwater treatment facility;
 - (2) Withhold issuance of temporary and/or certificates of occupancy or certificates of compliance for permitted work that is proposed to be served by such stormwater treatment facility; and/or
 - (3) Issue stop work orders for permitted work for any or all property that is proposed to be served by such stormwater treatment facility.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-636. Construction inspections.

- (a) *Inspections.* Regular inspections of the stormwater management system construction shall be the responsibility of the project designer (certifying professional engineer) or other owner's representative who has been approved by the county engineer. Inspection results of said inspections shall be forwarded to the county engineer. The property owner/developer shall notify the county engineer before beginning construction of any stormwater treatment facility and shall keep the county engineer advised as to the progress of the work and any changes in the schedule. For certain types and locations of stormwater treatment facilities, the county engineer may at his discretion require additional or parallel inspections by unified government staff. A final inspection will be required by the unified government before a certificate of occupancy and/or temporary certificate of occupancy can be released.
- (b) The unified government may also require the property owner/developer to retain a third party inspector, if at the county engineer's discretion, the complexity of the stormwater treatment facility, inexperience by the property owner's contractor, or harsh site conditions warrant the need for full-time third party inspection staff.
- (c) In addition to inspections established under previously adopted or subsequently amended unified government regulation of buildings and development, the county engineer may during the construction period inspect any stormwater treatment facility required under this article to ensure that it is correctly installed and adequately protected from construction phase sedimentation.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-637. Post-construction certification, as-built plans, and registry.

- (a) The following are required to be submitted and fully approved prior to release of a certificate and/or temporary certificate of occupancy:
- (1) *Post construction certification.* The project designer (professional engineer), or other party approved by the county engineer, must certify that the stormwater treatment facility is fully functional and that the materials and construction of the stormwater treatment facility fully comply with the approved plans, report, specifications and provisions of this chapter. The certification shall be made prior to issuance of a certificate and/or temporary certificate of occupancy.
 - (2) *As-built plans.* The property owner/developer shall also submit as-built plans showing in detail all construction changes from the accepted plans which shall be completed by a professional engineer. The certification shall be made prior to issuance of a certificate and/or temporary certificate of occupancy.
 - (3) *Stormwater treatment facility registry.* The county engineer shall create and sustain a registry of all stormwater treatment facilities required under this article. The registry shall include the location, description, ownership, and inspection and maintenance history of each facility and other information as the county engineer deems necessary. The owner of each stormwater treatment facility required under this article shall register that facility with the county engineer and shall update the county engineer of changes in contact information and transfers of any facility to another owner or persons responsible for maintaining the STF.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-638. Protection, maintenance and repair of facilities.

- (a) *Protection of stormwater treatment facilities.* No person shall remove, destroy, or otherwise impair the effectiveness or any stormwater treatment facility either installed in compliance with this chapter or installed voluntarily not as part of a development or redevelopment activity.
- (b) *Maintenance responsibility.* The property owner on whose land the stormwater treatment facility has been constructed pursuant to this chapter and any other person or agent in control of such land, shall maintain the stormwater treatment facility in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with relevant agreements, plans and reports accepted by the county engineer and any amendments thereto.
- (c) *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 county engineer. At a minimum, the maintenance agreement shall:
- (1) Identify the responsible party (with contact information) for those individuals responsible for maintaining all stormwater treatment facilities;
 - (2) Include an attachment showing the locations and dimensions of all stormwater treatment facilities;
 - (3) Provide access for the responsible party to maintain all stormwater treatment facilities, as well as right of access to the unified government as provided in other sections of this chapter;
 - (4) Establish minimum frequency and levels of maintenance to be completed;

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- (5) Establish the frequency of inspections;
 - (6) Identify the unified government's rights in the event that the responsible party fails or is unable to perform the obligations of the maintenance agreement;
 - (7) Clarify how modifications or additions can be made to the maintenance agreement; and
 - (8) The maintenance agreement shall be recorded in the Wyandotte County Register of Deeds and associated with all lots with stormwater treatment facility maintenance responsibilities.
- (d) *Notice on plat or title.* The final plat shall contain language approved by the county engineer to provide notice of facility presence and maintenance obligations. Said deed restriction shall be recorded with the unified government 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. The notice shall be in a form approved by the county engineer and substantially as set forth below:
- (1) "Notice: This site includes Stormwater Treatment Facilities, as defined and regulated in the Unified Government 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 County Engineer or his/her designee."
 - (2) When the development 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, a drainage easement shall granted by separate instrument and be recorded at the Wyandotte County Register of Deeds, and shall include the legal description of the property, the current owner, and other reference to the project, and the notarized signature of the property owner or owners.
- (e) *Dedicated tracts or easements.* All stormwater treatment facilities shall be located in a separate tract dedicated for this purpose; provided however, if the stormwater treatment facility serves lands from only one lot and is located on the lot served, then the stormwater treatment facility may be located within a drainage easement dedicated for this purpose. In all cases, the tract or drainage easement shall adjoin a public right-of-way or shall include provisions for access from a public right-of-way to the stormwater treatment facility for the benefit of the property owner, legally responsible for the facility and maintenance of facility, and the county engineer for periodic inspection of the stormwater treatment facility. The use of and the restrictions placed on all such tracts and drainage easements shall be binding on subsequent property owners on which the stormwater treatment facility is located. Whenever possible, a dedicated tract or drainage easement shall be made part of a final plat recorded at the Wyandotte County Register of Deeds. However, whenever it is not possible or practical as determined by the county engineer, a drainage easement shall be recorded by separate instrument by the property owner at the Wyandotte County Register of Deeds and recorded copy provided to the county engineer.
- (f) *Maintenance inspections and certifications by property owner.* The property owners of all stormwater treatment facilities, except for distributed facilities serving individual residential lots, must submit a maintenance certification report to the county engineer on or before the first day of November of each year. The maintenance certification report shall be completed and sealed by a registered professional engineer, landscape architect in the State of Kansas or Certified Stormwater manager, unless the county engineer approves other qualified professionals to perform these duties. Such maintenance certification report shall document each item including, but not limited to, the need for removal of silt, litter and other debris, grass cutting, removal of undesirable vegetation, and replacement of landscape vegetation or other specific items noted in the maintenance agreement. Any maintenance needs found must be documented and addressed in a timely manner, as determined by the county engineer, and the inspection and maintenance frequency required may be increased as deemed necessary to ensure proper functioning of the stormwater treatment facility.

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- (g) *Inspection of stormwater treatment facilities by the unified government.* The county engineer may 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.
- (h) *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 unified government in a manner and form acceptable to the county 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 it has a reasonable basis to believe that a violation of this article is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.
- (i) *Records of installation and maintenance activities.* Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all maintenance and repairs and shall retain the records for at least five years. These records shall be made available to the county engineer during inspection of the facility and at other reasonable times upon request and at a minimum shall be submitted with the annual certification package.
- (j) *Failure to maintain practices.* If a responsible party fails or refuses to meet the requirements of the maintenance agreement, the county engineer, after reasonable notice, may correct a violation of the stormwater treatment standards or maintenance needs by performing all necessary work to place the facility in proper working condition.
- (k) *Public safety threat.* In the event that the stormwater management facility becomes a danger to public safety or public health, the county engineer shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have 30 days to effect maintenance and repair of the facility in an approved manner. In the event of an emergency, when the county 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 county engineer will enforce the maintenance provisions of this chapter with any or all of the following enforcement measures:
- (1) *Notice of violation.* The county 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 county engineer may assess the property owner(s) of the facility for the cost of repair work and any penalties as authorized by law; and the cost of the work shall be a lien on the property, or assessed against the property owners defined on the plat or other registered document, and may be placed on the tax bill and collected as ordinary taxes by the unified government.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-639. Annual certifications.

- (a) On or before the first day of November of each year, the property owner and person responsible for maintaining each stormwater treatment facility shall obtain an inspection and prepare a certification as detailed in section 8-638(f).
- (b) The annual certification shall document if the stormwater treatment facility does not pass inspection and prepare a report of items that require corrective action. The report shall document each item including, but not limited to, the need for removal of silt, litter and other debris, grass cutting, removal of undesirable vegetation, replacement of landscape and vegetation and replacement and/or repair of structure items including underdrains, overflow structures, and storm drainage pipes. Any maintenance needs found shall be addressed in a timely manner, as determined by the county engineer, and the inspection and maintenance requirements may be increased as deemed necessary to ensure proper functioning of the stormwater treatment facility.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-640. Violations.

- (a) *Violations.* Any development activity that is commenced or is conducted contrary to this article, may be restrained by injunction or otherwise abated in a manner provided by law.
- (b) *Notice of violation.* When the county engineer finds that a property owner has violated, or continues to violate, any provision of this article, or order issued hereunder, the county engineer may serve upon that property owner a written notice of violation. Within 30 days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the property owner to the county engineer. Submission of such a plan in no way relieves the property owner of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the county engineer to take any action, including emergency actions or any other enforcement action, and does not require the county engineer to first issue a notice of violation.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-641. Enforcement.

- (a) *Default.* The following is considered the default enforcement procedures for this chapter as a whole and apply to all articles unless specifically annulled within an article.
 - (1) *Notice of violation.* Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - a. That violating practices, or operations shall cease and desist;
 - b. The abatement or remediation of the violation and the restoration of any affected property; and
 - c. Payment of a penalty to cover administrative and remediation costs; and
 - d. The implementation or rehabilitation of source control or stormwater treatment facility.
 - e. Compliance with articles in this chapter.

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- (2) *Abatement.* If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator. The notice of violation shall provide the owner with a minimum of 30 days from the date of the discovery of the violation to remediate or restore, unless the violation poses an immediate risk to the health of the public, damage to property, or other serious hazard.
- (3) *Form and service of notice of violation.* When required prior to a subsequent enforcement action, a notice of violation shall be given in the manner prescribed below:
- a. *Form.* Notice shall be in writing and shall include the location and description of the stormwater treatment facility in violation of this article. The notice shall describe the nature of the violation and the required corrective action and shall include a reasonable time limit for corrective action. The notice shall include a statement of the unified government's right to file a lien and shall inform the stormwater treatment facility owner of the right to appeal.
 - b. *Service.* Notice may be delivered to the stormwater treatment facility owner in person, or may be sent by certified mail, to the owner at the address provided in the stormwater facility registry, or in any other manner as authorized by law. Method of delivery is at the option of the county engineer. In the case that the registry information is incomplete the notice may be delivered to the property owner at the address of record.
- (b) *Withhold development authorization.* Whenever the county engineer determines the stormwater treatment plan does not meet the design standard the county engineer may take any of the following actions without prior notice of violation:
- (1) Withhold the recordation of a final plat for which the stormwater treatment plan is required;
 - (2) Withhold from the agenda of the planning and zoning board the final development plan or final plat for which the stormwater treatment plan is required; or
 - (3) Withhold the issuance of or place a stop work order on a building permit for which the stormwater treatment plan is required.
- (c) *Withhold occupancy permits.* Whenever the county engineer determines required stormwater treatment facilities have not been constructed according to plan and adopted construction standards or have been contaminated by construction phase sediment the county engineer may, without prior notice of violation, withhold the issuance of a temporary or final certificate of occupancy.
- (d) *Stop work.* Whenever the county engineer determines required stormwater treatment facilities have not been constructed according to plan and adopted construction standards or have been contaminated by construction phase sediment the county engineer may issue a stop work order. Issuance of a stop work order shall be followed as soon as practicable with a notice of violation identifying the conditions precipitating the stop work order.
- (e) *Prosecution of violation stormwater treatment facility owners.* Whenever the county engineer determines a stormwater treatment facility owner has not corrected the conditions listed in a notice of violation within the time period for remedy established in the notice, the county engineer may instigate appropriate proceedings at law or in equity to correct or abate the violation. If the fine assessed is not paid in a timely manner, the fine assessed may be certified to the unified government clerk and it shall, in accordance with law, become a lien upon the subject property. This amount shall be listed on the tax bill and be collected in the manner of ordinary taxes as authorized by law.

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- (f) *Abatement and cost recovery.* Whenever the county engineer determines a stormwater treatment facility owner has not corrected the conditions listed in a notice of violation within the time period for remedy established in the notice, the county engineer may authorize the unified government or its agents to go upon the land and correct the violation. Work may be accomplished by contract or otherwise at the discretion of the county engineer. Unified government is not obligated to provide cost estimates of the corrective work to the stormwater treatment facility owner prior to doing the work. Unified government is not obligated to seek the lowest cost for the corrective work. The stormwater treatment facility owner shall reimburse the unified government for all costs incurred by the unified government to correct the deficiency, including construction, engineering, inspection, administrative costs and interest at the current rate published by the Secretary of State pursuant to K.S.A. 16-204, and amendments thereto. The unified government may deny or delay all other permits on the subject property until the reimbursement is made. If in any event the amount due is not paid, the amount due may be certified to the unified government clerk and it shall, in accordance with law, become a lien upon the subject property. This amount shall be listed on the tax bill and be collected in the manner of ordinary taxes as authorized by law.
- (g) *Prosecution of violation impairing and interfering.* Whenever the county engineer determines a person is in violation of this article the county engineer may, without prior notice, instigate appropriate proceedings at law to assess fines pursuant to section 8-642 penalties.
- (h) *No order of precedence implied.* Except where the forgoing enforcement activities require the prior issuance of a notice of violation, the county engineer is not obligated to follow any order of precedence in applying enforcement actions.
- (i) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 30 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- (j) *Cost of abatement of the violation.* Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 30 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.
- (k) Any person violating any of the provisions of this article shall become liable to the unified government by reason of such violation. The liability shall be paid in not more than 12 equal payments.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-642. Penalties.

- (a) *Injunctive relief.* If any person violates the provisions of this chapter or regulations, orders, permits or other legal requirements of the unified government, the chief counsel may commence an action for legal or equitable relief in any court with appropriate jurisdiction.
- (b) *Civil penalties.* When the county engineer determines that a property owner has failed to comply with any provisions of this chapter or regulations, orders, permits or other legal requirements hereunder, the property owner shall be subject to a penalty not exceeding \$1,000.00 per violation, with recurrence on any succeeding day being a separate violation. Such civil penalties shall be recovered by the county engineer by

civil action in a court of appropriate jurisdiction. In addition to the civil penalties provided herein, the unified government may in any such action recover reasonable attorney's fees, court costs, court reporters' fees and other expenses of litigation, as well as any damages to the facilities of the unified government or to the environment against the person found to have violated this chapter or the regulations, orders, permits or other legal requirements hereunder.

- (c) *Criminal penalties.* Unless otherwise stated, any person violating any provisions of this chapter or regulations, orders, permits or other legal requirements hereunder wherein (1) such violation is an intentional violation, (2) such violation is a violation with any identifiable environmental harm, personal injury or damage to public or personal property, (3) any person knowingly has made any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or a permit issued hereunder, or who has falsified, tampered with or knowingly rendered inaccurate any monitoring device or method, and (4) any person has committed within a period of two years a second or additional violation of the same or comparable regulatory requirement shall upon conviction be guilty of a class A violation.
- (d) *Administrative penalties and orders.*
 - (1) When the county engineer finds that a property owner has violated, or continues to violate, any provision of this article, the county engineer may penalize such property owner in an amount not to exceed \$1,000.00. Such penalties shall be assessed on a per-violation, per day basis.
 - (2) Property owners desiring to dispute such penalties must file a written request for the county engineer to reconsider the penalty along with full payment of the penalty amount within 45 days after the issuance of the notice of violation. Where a request has merit, the county engineer may convene a hearing on the matter. In the event the property owner's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the property owner. The county engineer may add the costs of preparing administrative enforcement actions, such as notices and orders, to the penalty.
 - (3) Issuance of an administrative penalty shall not be a bar against, or a prerequisite for, taking any other action against the property owner.
- (e) The county engineer may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any property owner responsible for noncompliance. Such documents shall include specific action to be taken by the property owner to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to this article.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Sec. 8-643. Appeals.

- (a) Unless otherwise provided, any person aggrieved by an action of the county engineer or refusing any permit, suspending or revoking any permit, or any other final action imposing affirmative or negative obligations on such property owner under this chapter may appeal such decision to the county administrator or designee. No notice of violation under subsection 8-640(b) of this chapter, no requirement only for information or data concerning a regulated activity, and no action of the county engineer or designee not imposing specific affirmative or negative obligations shall be appealable. The county administrator must receive the written appeal within 15 days of the date of the county engineer's action, identifying the action appealed from, the relevant facts, and any information that such person requests the county administrator to consider. The county administrator or designee may in his/her discretion either informally decide the appeal without a hearing or may hold a hearing at which such person may present his/her arguments and evidence. At any

hearing held pursuant to this section 8-643, testimony taken must be under oath and recorded. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof. The county administrator will affirm, modify, or rescind the action in writing within 15 days of the appeal or any hearing held hereunder. Exhaustion of the opportunity for appeal under this section 8-643 shall be a jurisdictional prerequisite for judicial review of any action of the county engineer.

(Ord. No. O-81-21 , § 2, 6-24-2021)

Secs. 8-644—8-650. Reserved.