(Published 5-13-10)

ORDINANCE NO. D-25-10

AN ORDINANCE relating to the regulation of post-construction storm water treatment; creating a new Article to Chapter 8 to the Code of the Unified Government of Wyandotte County/Kansas City, Kansas.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:

Section 1. That Article XV of Chapter 8 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and the same is:

ARTICLE XV – POST-CONSTRUCTION STORMWATER TREATMENT

Section 8-630 General

(a) Persons undertaking development or redevelopment of land shall provide stormwater treatment as provided in this Article.

(b) Owners of stormwater treatment facilities shall register their facilities with the Director, shall regularly inspect and maintain their facilities, and shall report inspection results and maintenance activities all as provided in this Article.

(c) This Article shall apply to all development or redevelopment that is located within the limits of the City of Kansas City, Kansas, as it existed on September 30, 1997; and

(d) Exceptions: This article shall not apply to:

(1) Any development 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;

(1) 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; or

(2) Any site that makes application for preliminary plat or preliminary development plan prior to the publication date of this ordinance and receives approval of a final development plan or a final plat prior to September 1, 2010 and has completed all proposed improvements within 2 years of the date of approval.

(e) The Supplemental Regulations and Design Standards authorized by this article shall further define exceptions for agricultural, infill, remodeling, grounds maintenance,
and redevelopment activities and projects.

(f) In the process of adopting supplemental regulations authorized by this article the County Administrator may provide other exceptions to this article.

Section 8-631 Purposes of Article

(a) 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 Kansas 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 land. It is also the purpose of this Article to encourage responsible development and minimize the costs of development.

(b) 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.

(c) This Article establishes minimum requirements for post-construction stormwater treatment on any new development or redevelopment of land.

(d) This Article establishes registration, maintenance and reporting requirements on any owner of any private stormwater treatment facility.

Section 8-632 Definitions

(a) In this Article, these words and phrases have the following meanings:

(1) County Administrator: The individual appointed by the Mayor/CEO of the Unified Government as the Unified Government County Administrator or his/her designee.

(2) County Engineer: The individual appointed by the County Administrator as the Unified Government County Engineer or his/her designee.

(3) Developer: 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.

(4) Development or redevelopment: 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.

(5) Development site: Any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under one (1) ownership on which development or redevelopment of land occurs after the effective date of this ordinance.

(6) Director: The individual appointed by the County Administrator as Director of Water Pollution Control or his/her designee.

(7) Person: Any natural or corporate person, business association or business entity including, but not limited to, a corporation, a partnership, a sole proprietorship, 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.

(8) Stormwater: 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.

(9) Stormwater treatment facility: 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.

(10) Stormwater treatment facility owner: 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.

Section 8-633 Administration

(a) Administrative Duties. The Director of Water Pollution Control is the principal Unified Government official responsible for administration of this ordinance and its requirements. The Director may delegate any or all of his or her duties under this ordinance.

(b) Supplemental Requirements:

(1) Supplemental Regulation. The County Administrator is hereby authorized to adopt and, from time to time, to amend supplemental regulations necessary to implement this Article including the authorization to establish, assess, and amend administrative fees. Copies of any such regulations shall be available in the office of the Director.

(2) Design Criteria: The Director is hereby authorized to adopt and amend standards for post-construction stormwater treatment of developed sites. Copies of any such standards shall be available in the office of the Director.
(3) Maintenance Standards: The Director is hereby authorized to adopt and amend standards for inspection and maintenance of stormwater treatment facilities. Copies of any such standards shall be available in the office of the Director.

(4) Construction Standards: The County Engineer is hereby authorized to adopt and amend construction standards for stormwater treatment facilities. Copies of any such construction standards shall be available in the office of the County Engineer.

(5) Stormwater Treatment Facility Registry: The Director is hereby authorized to create and sustain a registry of all stormwater treatment facilities required by this article.

c) Unified Government’s Right to Enter. The Director is authorized to enter the premises for the purposes of inspecting compliance with this article and regulations adopted thereto and for performing any work necessary to bring the site into compliance with this article and regulations thereto. When entering premises the Director shall carry identification as an agent or employee of the Unified Government. In the event that the owner or occupant refuses entry after a request to enter has been made, the unified government is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.

Section 8-634 Stormwater treatment facility design and construction

(a) Developer to prepare stormwater treatment 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 stormwater treatment plan. 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, and a projected maintenance schedule. For multi-lot subdivisions the stormwater treatment plan shall also include maintenance agreements as deemed necessary by the Director.

(b) No separate permit: The Director shall review and approve the stormwater treatment plan. Review, approval, construction inspection, warrantee and performance bond 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.

c) Developer to construct: The developer shall construct the stormwater treatment facilities according to the approved plan and the adopted construction standards.

d) Prevent damage from construction phase sediment: Developer shall manage the construction sequence to protect the stormwater treatment facilities from construction phase sedimentation.
(e) Unified Government construction period inspection: In addition to inspections established under previously adopted or subsequently amended Unified Government regulation of buildings and development, the Director 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.

Section 8-635 Stormwater treatment facility registration, inspection and maintenance

(a) Stormwater treatment facility registry: The Director 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 Director deems necessary. The owner of each stormwater treatment facility required under this article shall register that facility with the Director and shall update the Director of changes in contact information and transfers of any facility to another owner. The owner of a stormwater treatment facility that is not installed as part of development or redevelopment may elect to register the facility with the Director.

(b) Owner inspection and maintenance: At intervals identified in the approved maintenance schedule but in no case less frequent than every two years each stormwater treatment facility owner shall inspect all stormwaters treatment facilities under his control. The stormwater treatment facility owner shall promptly remove all sediment and other sequestered pollutants and make all modifications, repairs, restoration, replanting, and media replacement identified in the inspection report. The owner shall provide a copy of the inspection report and certification of subsequent maintenance activity to the Director. Inspection and maintenance activities shall comply with the adopted Maintenance Standards in effect at the time of the inspection.

(c) Unified Government operational inspections: The Director may inspect any stormwater treatment facility required under this article as necessary to ensure that it is correctly installed and effectively maintained and is performing its intended function.

Section 8-636 Regulations applicable to all persons

(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 Section 8-634 or installed voluntarily not as part of a development or redevelopment activity.

(b) Non-Interference with Unified Government's corrective actions. No person shall obstruct the access to a site by an authorized representative of the Unified Government for inspection of stormwater treatment facilities or obstruct any representative of the land owner engaged in completing the work required under the stormwater treatment plan.
Section 8-637 Enforcement.

(a) *Withhold development authorization.* Whenever the Director determines the stormwater treatment plan does not meet the design standard the Director 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.

(3) Withhold the issuance of or place a stop work order on a Building Permit for which the stormwater treatment plan is required.

(b) *Withhold occupancy permits.* Whenever the Director 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 Director may, without prior notice of violation, withhold the issuance of a temporary or final certificate of occupancy.

(c) *Stop Work.* Whenever the Director 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 Director 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.

(d) *Notice of violation.* Whenever the Director determines a stormwater treatment facility owner is in violation of the inspection and maintenance requirements of this article the Director may issue a notice of violation in the form prescribed. Director shall issue a notice of violation prior to initiating either prosecution of the violation or abatement and recovery of cost.

(e) *Prosecution of violation stormwater treatment facility owners.* Whenever the Director 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 Director 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.

(f) *Abatement and cost recovery.* Whenever the Director 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 Director 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 director. 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 Director
determines a person is in violation of this article the Director may, without prior
notice, instigate appropriate proceedings at law to assess fines pursuant to Section 8-
639 Penalties.

(h) No order of precedence implied. Except where the forgoing enforcement activities
require the prior issuance of a notice of violation, the Director is not obligated to
follow any order of precedence in applying enforcement actions.

(i) 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 proscribed
below:

(1) Form. Notice shall be in writing and shall include the location and description of
the stormwater treatment facility in violation of this ordinance. 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.

(2) 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 Director. In the case that the registry
information is incomplete the notice may be delivered to the property owner at the
address of record

Section 8-638 Appeals:

(a) Whenever a person shall deem themselves aggrieved by any decision or action taken
by the Director acting under the authority of this Article, the person may file an
appeal with the County Administrator with a copy to the Director within ten (10)
calendar days of the date of notice of such decision or action.
(1) Exception. Whenever the Director's decision is the instigation of proceedings at law for the assessment of a fine, due process is assured by the proceedings and appeal to the County Administrator is not available.

(b) The person shall be afforded a hearing on the matter before the County Administrator within thirty (30) days of filing the appeal. A written decision will be issued within thirty (30) days of the hearing. At any hearing held pursuant to this chapter, 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 thirty (30) calendar days of the hearing.

(c) In cases where compliance with the decision or action taken by the Director would cause undue hardship and the County Administrator finds that it is in public interest to extend the time limit for such decision or action, grant exceptions to, waive requirements of, or grant a variance from a specific provisions, the County Administrator may extend the time limit of such decision or action, may grant exceptions to, waive requirements of, or grant a variance from a specific provision. The County Administrator shall give due consideration to the purposes for this Article as stated in Section 8-631.

(d) Once an appeal has been taken, the order of the Director shall be stayed until a decision is rendered by the County Administrator, unless the Director determines in writing that a stay will pose a threat to public safety, natural resources, other properties, or the integrity of the public infrastructure.

(e) Any such person shall have thirty (30) days after the County Administrator's written decision is issued to institute an action in the District Court of Wyandotte County, Kansas. An action pending before the court shall stay compliance with the County Administrator's decision, unless the County Administrator determines in writing that a stay will pose a threat to public safety, natural resources, other properties, or the integrity of the public infrastructure.

Section 8-639 Penalties.

(a) The violation of any provision of this article is hereby declared to be a public offense. Any person convicted of such a violation shall be punished by a fine of not less than two hundred fifty ($250.00) and not more than one thousand dollars ($1,000.00). Each day a violation occurs shall constitute a separate offense.

Section 8-640 Other matters.

(a) Other Laws.

(1) Neither this Article nor any decision made with respect hereto exempts the applicant or any other person from other requirements of the Unified Government Code, from state and federal laws, or from procuring other required permits, nor does it limit the right of any person to maintain, at any time, any appropriate
action, at law or in equity, for relief or damages against the applicant or any person arising from the activity regulated by this Article.

(2) This Article shall not be construed to be in conflict with any state or federal law intended to control the management of stormwater and water quality. In those instances where state or federal law imposes a duty or requirement with respect to a matter covered by this Article, the more strict duty or requirement shall control.

(3) The permittee is responsible for safely and legally completing the development project. Neither the approval of a stormwater treatment plan under the provisions of this Article, nor the compliance with the provisions hereto or with any condition imposed by the Unified Government, shall relieve any person from responsibility for damage to persons or property resulting therefrom, or as otherwise imposed by law, nor impose any liability upon the Unified Government for damages to persons or property.

(b) Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions.

(c) Unified Government Failure to Enforce. The Unified Government’s failure to enforce or remedy any noncompliance of the terms and conditions of this ordinance shall not constitute a waiver of the Unified Government’s rights nor a waiver of any person’s obligation as provided in this ordinance.

(d) Reservations of Rights. In addition to any rights specifically reserved to the Unified Government by this ordinance, the Unified Government reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit, or other authorization granted under this ordinance.

(e) Savings Clause. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Ordinance, nor be construed as affecting any of the provisions of these Ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Ordinance, and all rights and obligations there under shall continue in full force and effect.

(f) Effective date. This ordinance shall take effect and be in full force after its passage, approval, and publication in the official Unified Government newspaper.

Joe Reardon
Mayor/CEO

ATTEST:

[Signature]
Unified Government Clerk

Approved as to form:

[Signature]
Misty S. Brown
Assistant Counsel