

**CHAPTER 407**  
**STORMWATER MANAGEMENT**

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**ARTICLE I. GENERAL**

**Section 407.010 Intent and Purpose.**

The purpose of these regulations is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by guiding, regulating, and controlling the design, construction, use and maintenance of all stormwater facilities and development.

**Section 407.020 Responsibility for Administration**

The provisions of this chapter shall be administered and enforced as directed by the Public Works Director. The Public Works Director shall prescribe forms for attainment of the purposes of this chapter and for the proper enforcement thereof. The Public Works Director may delegate the administration of this chapter, or any part thereof, subject to limitations of the ordinances of the City, to duly qualified employees, deputies or agents of the City.

**Section 407.030 Definitions.**

Unless specifically defined below, words or phrases in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application:

Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good house keeping 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 treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

City. The City of Excelsior Springs, Missouri.

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

Clearing. Any activity which removes the vegetative surface cover.

Council. The city council of the City of Excelsior Springs, Missouri.

Design year storm. The selected or established frequency or return period of rainfall time-duration for which drainage facilities are to be designed.

Detention basin. Any man-made area which serves as a means of controlling and storing stormwater runoff.

Developer. A person directing or participating in the direction of improvements on and/or to land, including, but not limited to, the owner of the land, a general contractor or a commercial agent engaged for such activity.

Development. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations. May also include any change of land use.

Drainage Basin (Watersheds). The catchment area from which stormwater is carried off by a watercourse or storm drainage system. The area served by a drainage system receiving storm and other surface-borne water. The boundaries of a drainage basin are a product of natural topography and drainage system configuration.

Drainage facility. A man-made structure or natural watercourse for the conveyance of stormwater runoff. Examples are channels, pipes, ditches, swales, catch basins and street gutters.

Drainage Way. Any channel that conveys surface runoff.

Erosion Control. Measures that prevent erosion.

Erosion and Sediment Control Plan. A set of plans prepared by or under the direction of a licensed professional engineer that indicates the specific measures and sequencing to be used controlling sediment and erosion on a development site both before, during and after construction.

Grading. Excavation or fill of material, including the resulting condition thereof.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted by this ordinance.

Illicit Connections. An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Impervious surface. Surfaces on real property where infiltration of stormwater into the earth has been virtually eliminated by the works of man.

**Improved land.** Land having improvements that are impervious to, or alter the flow of, stormwater within the limits of a platted, or otherwise distinguished, parcel of land.

**Improvement.** A structure on or other alteration of land.

**Industrial Activity.** Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**KC-APWA 5100.** Kansas City Metro Chapter of the American Public Works Association (APWA), Division 5100, Erosion and Sediment Control, as amended from time to time by APWA and including all additions and exceptions kept on file by the City.

**KC-APWA 5600.** Kansas City Metro Chapter of the American Public Works Association, Division 5600, Storm Drainage Systems and Facilities, as amended from time to time by APWA and including all additions and exceptions kept on file by the City.

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit.** A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) 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.

**Natural Stream.** For the purposes of this chapter natural stream shall be defined as a water course containing an ordinary high water mark most typically indicated as either a dashed (intermittent) or solid (perennial) blue line on the USGS 7.5 minute quadrangle maps.

**Ordinary High Water Mark.** A line on the bank established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**Owner.** Any person, firm, association, syndicate, partnership, corporation, trust, or any other entity having legal title to, or a sufficient proprietary interest to legally transfer, real property. Proprietary interest shall include, but not be limited to, estate administration, trusteeship, guardianship and actions under a valid power of attorney. Proprietary interest shall not include an agency or a bare employment relation.

**Perimeter Control.** A barrier that prevents sediment from leaving a site either by filtering sediment-laden runoff, or diverting it to a sediment trap or basin.

**Person.** A natural person, corporation, partnership or other entity.

**Phasing.** Clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

**Pollutant.** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**Premises.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Riparian Buffer.** An area of land adjacent to a waterway or wetland area, predominantly indicated by vegetation tolerant to occasional inundation or that thrive in close proximity to water. Native vegetation tends to be more dense than in upland areas. The intended purpose of the buffer is to protect water quality through filtration and infiltration, minimize the effects of stream bank erosion and enhance flood protection. After the riparian buffer is platted, the area designated on the plat as the riparian buffer shall be substituted for this definition.

**Sediment Control.** Measures that prevent eroded sediment from leaving the site.

**Site.** A parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

**Stabilization.** The use of practices that prevent exposed soil from eroding.

**Start of Construction.** The first land-disturbing activity associated with a development, including land

preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

**Storm drain.** An improved storm drain is a closed conduit or paved open ditch for conducting collected stormwater. An unimproved storm drain is an open ditch, natural or specifically constructed for conveying collected stormwater.

**Stormwater.** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation (such as rain or snow), and resulting from such precipitation.

**Stormwater drainage system.** All drainage facilities used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlets including, but not limited to, any and all of the following: Conduits and appurtenant features, canals, ditches, streams, gullies, flumes, culverts, streets, gutters and pump stations.

**Stormwater Pollution Prevention Plan.** A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

**Swale.** A relatively wide, shallow ditch used to carry stormwater runoff.

**Unimproved land.** Land in its natural state.

**Unreasonable delay.** More than three (3) hours when there is an immediate threat to public health, safety or welfare or twenty-four (24) hours when there is suspicion of other violations.

**Variance.** A grant or relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

**Vegetation.** Trees, shrubs, grasses and other plant material.

**Wastewater.** Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

**Watercourse.** A stream, usually flowing in a particular direction (though it need not flow continuously in a definite channel), having a bed or banks and usually discharging into some other stream or body of water.

#### **Section 407.040 Limitations on Liability.**

Floods from stormwater runoff may occur which exceed the capacity of stormwater drainage facilities constructed and maintained under this chapter. This chapter does not guarantee that property will always be free from stormwater flooding or flood damage. This chapter shall not create a liability on the part of, or cause of action against, the City or any officer or employee thereof for any flood damage. Neither does this chapter purport to reduce the need or the necessity for obtaining flood insurance.

#### **Section 407.050 Conditions, Interpretations, Conflict, Separability.**

A. Conditions. Regulation of stormwater drainage and the attachment of reasonable conditions thereto is an exercise of the valid police power delegated by the State of Missouri to the City. Property owners have the duty of compliance with reasonable policies, regulations, standards and conditions established by the City for design, construction, improvement and restrictive use of the land so as to conform to the physical and economical development of the City, and to promote the health, safety and general welfare of the community at large.

B. Interpretation. The provisions of this chapter shall be the minimum requirements for the protection of the public health, safety and general welfare.

C. Conflict. Conflict with public and private provisions:

1. Public provisions. Where any provision of this chapter imposes restrictions different from those imposed by any other law or regulation, whichever is more restrictive or imposes a higher standard shall control.

2. Private provisions. This chapter is not intended to abrogate any easement, covenant or any other private agreement or restriction; provided, that where the provisions of this chapter are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of this chapter shall govern.

D. Separability. The provisions and sections of this ordinance shall be deemed to be separable, and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

**Section 407.060 Access to the facilities.**

The City shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.

Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this ordinance.

If the City has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

**Section 407.070 Violations and Penalties.**

In addition to any specific penalties set forth in individual articles, any person found guilty of violating the provisions of this chapter, shall upon conviction be fined not less than one dollar (\$1) and not more than five hundred dollars (\$500.00) or up to 90 days in jail or any combination thereof and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City, or other appropriate authority, from taking such other lawful action as is necessary to prevent or remedy any violation.

Where a violation is declared a nuisance, all policies and procedures set forth in Chapter 235 shall apply.

**ARTICLE II. STORMWATER MANAGEMENT**

**Section 407.080 General Requirements.**

**A. Design Criteria**

1. Storm Drainage Systems and Facilities: The design procedures stipulated in the KC-APWA 5600 shall be followed insofar as it is applicable. Written justification for all deviations must be prepared and submitted in accordance with the variance procedures set forth in this chapter.

2. Erosion and Sediment Control: The design procedures stipulated in the latest edition of the KC-APWA 5100 shall be followed insofar as it is applicable. Written justification for all deviations must be prepared and submitted in accordance with the variance procedures set forth in this chapter.

**B. Standard Drawings:** The Kansas City Metro Chapter of the American Public Works Association, Division 5300, Standard Drawings (KC-APWA 5300) shall be referenced as necessary for design and construction in addition to any standard details kept on file by the City. When the two documents conflict, the City of Excelsior Springs Standard Details shall rule.

**C. Plan Requirements:** Plans shall include all drawings, narratives and computations as outlined in KC-APWA 5100 and 5600.

**D. Drainage onto sidewalks.** Tributary areas where sidewalks exist or are proposed, and which drain across a public sidewalk, must not exceed three thousand (3,000) square feet of impervious area, including roofs discharging upon paved areas, or nine thousand (9,000) square feet of sodded areas, or in proportional amounts for a combination of such areas. Paved, roofed or other impervious areas exceeding three thousand (3,000) square feet shall be provided with drains for discharge into storm conduits, channels, or street gutters.

**E. Downspouts.** Downspouts shall not be discharged directly onto sidewalks or entrance ways. When downspouts are connected to the gutterline of the street or the public drainage system, they shall be connected by a method approved by the City. Downspouts shall not discharge within the building setback unless there is a drainage swale established to carry the water to the front or rear of the property or closest natural drainage course. Downspouts may also discharge within the building setback if discharging into a rain garden, rain barrel or other stormwater best management practice.

**F. Flow toward streets.** Any concentration of surface flow in excess of two (2) cubic feet per second (cfs) for the ten-year frequency rain shall be intercepted before reaching the street right-of-way and shall be carried by a storm drain to connect with a drainage structure at the low point in the street right-of-way or to discharge to a watercourse.

G. Parking lots and garages. Adequate provisions shall be made for the disposal of stormwater from parking lots and garages. Plans shall be submitted for approval to the City to ensure measures are taken to limit the flow of water onto adjoining property or adjacent sidewalks or streets in a quantity that would be detrimental to or inconvenient to persons using the streets or sidewalks.

H. Natural Stream Protection On Developments Platted after May 10, 2008.

1. Natural streams shall be buffered by a twenty-five (25) foot riparian buffer zone plus an additional twenty-five (25) foot building setback. The riparian buffer zone shall be measured from the ordinary high water mark and the building setback shall be measured from the edge of the riparian buffer zone.
2. Riparian buffer zones shall remain undisturbed to the maximum extent practicable. This zone prohibits any land disturbance, clearing, grubbing, or any other construction activities except as necessary for utility construction and road access. Such construction shall minimize disturbance of the stream and riparian buffer zone. Naturally occurring vegetation within the riparian buffer zone shall not be removed, diminished, inhibited, mowed or substantially altered from its natural state or growth.
3. Adjustments in widths of the riparian buffer zone or adjacent building setback may be made when approved by the Public Works Director when local conditions justify deviation from the standard widths.
4. Wherever the designated riparian buffer zone must be disturbed, mitigation measures shall be taken to re-establish vegetative filtration and stream stabilization to the maximum extent practicable.

#### **Section 407.090 Approvals Required.**

A. No stormwater drainage facility shall be constructed, altered or reconstructed without first obtaining approval of plans for said facility. All such construction shall comply with the general requirements and design procedures, as set forth in this chapter, and the criteria of the KC-APWA 5600.

B. No clearing, grading, borrowing or filling of land shall be done without an approved grading permit. A grading permit will only be issued in conjunction with an approved grading plan, an approved erosion and sediment control plan, a stormwater pollution prevention plan, a copy of the state land disturbance permit (where required) and a receipt of the \$25.00 permit fee. All plans shall be prepared by a registered professional engineer. For tracts less than one (1) acre, the developer may alternatively reference the Kansas City American Public Works Association Single Family Residential Standard Design Booklet in lieu of a swppp and erosion and sediment control plan. Every approval under this subsection for clearing, grading, borrowing or filling of land shall expire within one (1) year from the date of issuance and is renewable for up to one (1) year. No approval is required for the following activities:

1. Any emergency activity which is immediately necessary for the protection of life, property or natural resources.
2. Existing nursery and agricultural operations conducted as a permitted main or accessory use.
3. Minor construction that does not substantially alter the lay of the land or increase the impervious surface by more than 10%.

C. The Public Works Director or his/her designee shall promulgate rules and regulations governing the issuance of the permits required by this section.

D. Duties of property owners and developers: detailed plan required.

1. Prior to the issuance by the City of a building permit for any type of construction, the property owner, the developer or their agent shall have a drainage plan prepared by a registered professional engineer and approved by the City in accordance with this chapter. The property owner, developer or their agent shall, at his own expense, submit necessary plans, designs and specifications to the City for review and approval. The Director may waive some of the requirements for any site less than one acre.
2. Provisions of this section for plan requirement shall be waived provided no land is disturbed and no trees, shrubs, grass or vegetation is destroyed or removed for construction, reconstruction, repair or alteration of any building provided the improvement does not alter or increase the flow of water.
3. Plan review fees pursuant to Section 500.090 Miscellaneous Building Regulations must be submitted with the detailed plan.
4. When outside consultants are used for third party reviews actual cost of review will be charged to the developer pursuant to Section 500.060

Permit Fees.

E. Review and approval

1. The City will review each application for a permit to determine its conformance with the provisions of the Code. Within thirty (30) days after receiving an application, the City shall, in writing:

- a. approve the permit application; or
- b. approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
- c. disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.

2. Failure of the City to act on original or revised applications within thirty (30) days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the City. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the City.

3. If a permit is issued in error, the permit may be suspended or revoked until the plans are brought into compliance or other action is taken.

F. Modifications to the plan

1. Major amendments of any approved plan shall be submitted to the City and shall be processed and approved, or disapproved, in the same manner as the original plans.

2. Field modifications of a minor nature may be authorized by the City by written authorization to the permittee.

**Sec. 407.100 Developments.**

A. Restriction of runoff. The City may require that storm drainage systems for tributary areas upstream of existing storm drainage facilities include on-site stormwater detention facilities limiting the peak discharge to that which would have occurred prior to development of the area. The City may waive such requirements for detention facilities when the developer makes satisfactory arrangements to improve or provide a downstream drainage system of adequate hydraulic capacity for peak rates of discharge to the system, including discharge from the developer's site, to a point downstream where the rate of total runoff from the site is ten (10) percent or less of the total runoff rate conveyed by the downstream system measured at the time of system peak rate. The City at its option may allow downstream system improvements, detention and/or fees in-lieu-of construction that provide the same level of control.

B. Alternative improvements. In reviewing petitions for variances from the requirements of this section, the City will consider alternative improvements or types of improvements proposed by developers which the City deems to be equivalent for the purpose of stormwater management.

**Section 407.110 Construction requirements.**

A. Location of structures. In addition to any other requirements set forth by ordinance for construction in designated flood hazard areas, the following restrictions for construction adjacent to all watercourses and other drainage facilities shall apply:

1. No house or building and no other structure shall be constructed within fifty (50) feet of the ordinary high water mark of a watercourse or other drainage facility nor shall any such structure be constructed with openings at an elevation below four (4) feet above the highest bank of a watercourse or top of other drainage facilities which traverse or are adjacent to the parcel being developed.

2. The City may vary the above requirements upon visiting the building site and/or reviewing plans for construction should such revisions not diminish the overall intent of this chapter.

B. Existing storm drains. No cuts shall be made nor fill deposited over existing storm drains nor shall existing storm drains be altered without the approval of the Department of Public Works.

**Section 407.120 Easements and maintenance.**

A. Easements. Whenever improvements to land are made, easements for the stormwater drainage system including structural facilities, engineered channels and overflow paths, shall be provided across private

property. Easements through existing developments may be obtained as deemed necessary. Drainage easements shall include access from a convenient public street or parking lot. The minimum width of easements for stormwater drainage shall be fifteen (15) feet. Where a storm drain consists of a closed conduit, the width shall be the greater of fifteen (15) feet or the sum of the conduit diameter and twice the cover depth over the conduit. Where the drainage system consists of an engineered channel, easements shall be as wide as the top of bank width plus ten (10) feet each side.

#### B. Maintenance.

1. **Public Stormwater Improvements.** Maintenance of stormwater sewers, lined drainage channels, detention facilities and related facilities located within public drainage easements shall be the responsibility of the City.
2. **Natural Channels.** The City may undertake all maintenance activities, deemed necessary, of natural watercourses and other unlined drainage channels located within public drainage easements; however, assumption of such maintenance activities does not relieve the property owner of the responsibility for normal maintenance including trash and debris removal, cutting of vegetation, repair of erosion and removal of silt.
3. **Private Stormwater Improvements.** Maintenance of stormwater facilities located on private property and not within any public drainage easements shall be the responsibility of the property owners and shall include trash and debris removal, cleaning, cutting of vegetation, repair of erosion, removal of silt and maintenance of structural facilities.
4. **Private Detention Facilities.**
  - a. **Responsibilities.** Owners of land containing private detention facilities shall maintain the facility as it was designed in order to continue the mitigation of the stormwater impacts and to prevent the contamination of discharge from the facility. This maintenance shall include removal of overgrown vegetation, trash and debris removal, repair of erosion, repairs to any inlet/outlet structures, and removal of excess silt or any other maintenance deemed necessary to provide the design storage capacity.
  - b. **Nuisance declared.** Failure to provide necessary maintenance shall be deemed a nuisance.
  - c. **Stormwater Pollution Prevention.** Any owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

#### **Section 407.130 Interference and damage.**

No person shall damage or discharge or place any substance into the drainage system which will or may cause obstruction to flow or other interference with the operation of the stormwater drainage system. Any person violating this section or damaging the stormwater drainage system shall be liable to the City for all expense, loss or damage incurred by the City due to such violation or damage, in addition to any other penalties set forth herein.

#### **Section 407.140 Inspection.**

The City may periodically inspect development sites. Through such periodic inspections the City shall ensure that the drainage plan is properly implemented. The improvements shall be maintained by the developer or owner until such time, if any, maintenance is taken over by the City. Maintenance will not be taken over by the City until the developer provides a letter from the registered professional engineer stating that the stormwater systems were built according to plan and all applicable standards and specifications with documentation and justification of any deviations.

#### **Section 407.150 Remedial work.**

If it is determined that development is not proceeding in accordance with the approved drainage plan, the City shall issue a written stop-work order to the developer detailing the nature and location of the noncompliance and specifying what remedial work is necessary to bring the project into compliance. The developer shall immediately stop work on all aspects of the development except the required remedial action, which shall

begin. The developer shall complete the remedial work within a reasonable time after receipt of said order. Upon satisfactory completion of the remedial work, the City shall issue a notice of compliance and the development may proceed.

### **ARTICLE III. ILLICIT DISCHARGE DETECTION AND ELIMINATION**

#### **Section 407.160 General.**

A. Purpose. The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
2. To prohibit Illicit Connections and Discharges to the MS4
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

B. Applicability. This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted.

C. Ultimate Responsibility. The standards set forth in this article and promulgated pursuant to this article are minimum standards. Compliance with this article does not insure that there will be no contamination, pollution or unauthorized discharge of pollutants into the waters of the United States. This article shall not create liability on the part of the City or any agent or employee of the City for any damages that result from any discharges, reliance on this article or any administrative decision made under this article.

#### **Section 407.170 Prohibitions.**

A. Illegal Discharges. Except as provided in subsection (b), it shall be unlawful for any person to discharge or cause to be discharged into the municipal separate storm sewer system or into any water course any material other than stormwater.

The following discharges are exempt from the discharge prohibitions established by this article:

1. Waterline flushing or other potable water sources;
2. Landscape irrigation or lawn watering;
3. Diverted stream flows;
4. Rising groundwater;
5. Groundwater infiltration;
6. Uncontaminated pumped groundwater;
7. Foundation or footing drains excluding active groundwater de-watering systems;
8. Crawlspace pumps, air conditioning condensation;
9. Springs;
10. Non-commercial washing of vehicles;
11. Natural riparian habitat or wetland flows;
12. Swimming pools if de-chlorinated to less than 1 ppm chlorine;
13. Fire fighting activities;
14. Other water not containing pollutants;
15. Discharges specified by the City as necessary to protect public health and safety;
16. Dye testing if notification is given to the City before the test; and
17. Any non-storm water discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the municipal separate storm sewer system.

B. Illicit connections.

1. It shall be unlawful for any person to construct, use, maintain or have an illicit connection.
2. This section expressly applies to illicit connections made in the past even if the connection was permissible under law or practices applicable or prevailing at the time of connection.

C. Waste disposal prohibitions.

It shall be unlawful for any person to place, deposit or dump or to cause or allow the placing, depositing or

dumping any refuse, rubbish, yard waste, paper litter or other discarded or abandoned objects, articles and accumulations containing pollutants into the municipal separate storm sewer system or into any waterway.

**D. Connection of sanitary sewer prohibited.**

It shall be unlawful for any person to connect a line conveying sewage to the municipal separate storm sewer system or to allow such a connection to continue.

**E. Industrial or construction activity discharges.**

It shall be unlawful for any person subject to an industrial activity or construction NPDES storm water discharge permit to fail to comply with all provisions of such permit.

**F. Continuing violation.**

Each day that a violation of this article continues shall be deemed a separate offense.

**Section 407.180 Notification of Spills.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the City 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 within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**Section 407.190 Regulations and Monitoring.**

A. The City Council may, by ordinance, adopt standards identifying best management practices (BMP) for any activity, operation or facility which may cause or contribute to pollution of storm water, the storm drain system, waters of the state or waters of the United States. These standards shall be on file in City Hall. It shall be unlawful for any person undertaking any activity or owning or operating any facility subject to such standards to fail to comply with the standards.

B. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal separate storm sewer system or water courses through the use of structural and non-structural BMPs. Any person responsible for property which is or may be the source of an illicit discharge may be required to implement additional structural and non-structural BMPs to prevent further discharge. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity to the extent practicable shall be deemed in compliance with provisions of this section. These BMPs shall be a part of the storm water pollution prevention plan as necessary for compliance with the requirements of the NPDES permit.

**Section 407.200 Nuisance declared.**

A. Any discharge in violation of this article is a nuisance.

B. Any illicit connection is a nuisance.

**ARTICLE IV. EROSION AND SEDIMENT CONTROL**

**Section 407.210 General.**

Grading, erosion control practices, sediment control practices, and waterway crossings shall be adequate to prevent transportation of sediment from the site.

**Section 407.220 Clearing and Grading.**

A. Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted, except when in compliance with all other chapters of this Code.

B. Clearing techniques that retain natural vegetation and retain natural drainage patterns shall be used.

C. Phasing shall be required on all sites disturbing greater than *thirty* acres, with the size of each phase to be established at plan review.

D. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

E. Cut and fill slopes shall be *no greater than 2:1*, except as approved by the City to meet other community or environmental objectives.

**Section 407.230 Erosion Control.**

A. Soil must be stabilized within 30 days of clearing or inactivity in construction, unless otherwise authorized.

B. If vegetative erosion control methods, such as seeding, have not become established, the City may require that the site be reseeded, or that a non-vegetative option be employed where possible.

C. On steep slopes or in drainage ways, special techniques that meet the design criteria outlined in KC - APWA Division 5100 shall be used to ensure stabilization.

D. Soil stockpiles must be stabilized or covered at the end of each work day unless otherwise protected from allowing sediment to leave the site.

E. Techniques shall be employed to prevent the blowing of dust or sediment from the site.

F. Techniques that divert upland runoff past disturbed slopes shall be employed.

**Section 407.240 Sediment Controls.**

A. Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, and perimeter controls.

B. Where possible, settling basins shall be designed in a manner that allows adaptation to provide long term stormwater management.

C. Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.

**Section 407.250 Waterways and Watercourses.**

A. When a wet watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided, and an approval obtained from the U.S. Army Corps of Engineers.

B. When in-channel work is conducted, the channel shall be stabilized before, during and after work.

C. All on-site stormwater conveyance channels shall be designed according to the criteria outlined in KC - APWA Division 5600 .

D. Stabilization adequate to prevent erosion must be provided at the outlets of all pipes and paved channels.

**Section 407.260 Construction Site Access.**

A. A temporary access road or driveway shall be provided at all sites where a land disturbance permit is required.

B. Other measures may be required in order to ensure that sediment is not tracked onto public streets by construction vehicles, or washed into storm drains.

C. Regardless of the amount of land disturbance at a particular site, it shall be the responsibility of the permit holder and/or property owner to ensure streets open to the public surrounding a permitted site are kept free of excessive trash and debris and sediment throughout the term of the permit. Upon notification that a problem exists, the permit holder and/or property owner shall immediately remedy the issue. If the permit holder and/or property owner fails to remedy such issue, the City may temporarily suspend the permit until the problem has been resolved. If a permit holder and/or property owner does not address the issue after requested, the City may choose to remedy the situation and bill the permit holder and/or property owner for any reasonable associated costs. The permit will remain suspended until said bill is paid. Alternatively, the permit holder and/or property owner may request a hearing with the Public Works Director to contest the abatement costs.

**Section 407.270 Inspection.**

A. General: The City may periodically inspect development sites. Through such periodic inspections, the City shall ensure that the Stormwater Pollution Prevention Plan (SWPPP) is properly implemented and any necessary amendments thereto made in order to protect the environment and the public's health, safety and

welfare. The erosion and sediment control measures for the site must be maintained by the developer until the site is stabilized.

B. The permittee shall notify the City at least two (2) working days before the following:

1. Start of Construction
2. Site Clearing has been completed
3. Rough Grading has been completed
4. Final Grading has been completed

C. The permittee or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved erosion and sediment control plan(s) or in the Stormwater Pollution Prevention Plan (SWPPP). The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for additional control measures and/or maintenance of existing measures. All inspections shall be documented in written form and kept readily on site.

#### **Section 407.280 Violations and Penalties.**

A. The City may suspend or revoke any permit associated with the site or any permit associated with the person(s) holding the permit(s) for the site for non-compliance with this article.

B. Procedure

1. Upon discovery of a violation of this article, the contractor will be notified and given up to seven (7) days to remedy the violation. The owner may request a hearing before the Public Works Director to review any violation notice within the given time frame. If such a request is made, the Public Works Director shall promptly set a hearing on the matter. Any person aggrieved by a decision of the Public Works Director may appeal his decision to the Circuit Court of Clay County.

2. If the violation has not been remedied within the time frame set forth in the notice, the permit(s) will be suspended. Once the violation has been remedied, the suspension will be lifted.

3. If the violation for which the permit(s) was suspended is not corrected within 30 days, the permit(s) shall be revoked and the violation deemed a nuisance.

4. After two (2) suspensions of a permit for the same site for similar violations, the permit(s) may be revoked for up to a year and no additional permits may be issued for a period of no less than twelve (12) months. All applicable procedures from other chapters will have to be followed for re-issuance of the permit(s). Additionally, any remediation or abatement costs will be required to be paid prior to re-issuance.

#### **ARTICLE V. VARIANCES**

##### **Section 407.290 General.**

Where undue hardships or practical difficulties may result from strict compliance with this chapter, the developer may petition for a variance. Staff may recommend, and the Board of Zoning Adjustments may approve, variances so that substantial justice may be done and the public interest secured; provided, that any such variance shall not have the effect of nullifying the intent and purpose of this chapter; and further provided, that the council shall not grant variances unless they find and determine that:

1. The granting of the variance will not be detrimental to the public safety, health or welfare, or injurious to other property or improvements.
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought, are not applicable generally to other property, and are not self-imposed.
3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if this chapter was strictly interpreted and carried out.

##### **Section 407.300 Conditions.**

In recommending variances and exceptions, staff may recommend and the council may require such conditions as will, in the judgment of each, secure substantially the objectives of the standards or requirements of this chapter.

##### **Section 407.310 Procedures.**

A petition for a variance shall be submitted at the time of filing for a preliminary plat or for application for a building permit. The petition shall state fully the grounds for the request and all facts relied upon by the practitioner.