



UPDATE
Public Works and Safety Committee
Standing Committee Meeting Agenda
Monday, April 26, 2021
5:00 PM

Location: Remotely

You are invited to a Zoom webinar.

When: Apr 26, 2021 05:00 PM Central Time (US and Canada)

Topic: PW/S & A/HS Standing Committee Meetings

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/83860957287?pwd=c2lFSFR2ZkVZRlScDRPd296U05qZz09>

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<u>Name</u>	<u>Absent</u>
Commissioner Melissa Bynum, Chair	☐
Commissioner Angela Markley	☐
Commissioner Christian Ramirez	☐
Commissioner Mike Kane	☐
Commissioner Jane Philbrook	☐
Tom Groneman, BPU Board Member	☐

I. **Call to Order/Roll Call**

II. **Revisions to April 26, 2021 Agenda**

New Item No. 3 – 21781...EPA's Healthy, resilient, and sustainable materials grant

III. **Approval of standing committee minutes (no minutes available)**

IV. **Committee Agenda**

Item No. 1 - ORDINANCE: REVISIONS TO MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

Synopsis: An ordinance revising regulations to comply with the requirements of the 2020 KDHE MS4 Permit and comments made by the EPA related to the Unified Government's Pretreatment Program, submitted by Jeff Fisher, Executive Director of Public Works.

Tracking #: 21774

Item No. 2 - UPDATE: STORMWATER DESIGN CRITERIA

Synopsis: Update on the Unified Government's Stormwater Design criteria to APWA 5600

to be consistent with the criteria utilized by most of the metro area, submitted by Jeff Fisher, Executive Director of Public Works.

Division V Design Criteria Link: [DIVISION II \(apwa.net\)](#)

For information only.

Tracking #: 21773

V. Public Agenda

VI. Adjourn

**AGENDA UPDATE
PUBLIC WORKS & SAFETY
STANDING COMMITTEE MEETING
MONDAY, APRIL 26, 2021**

IV. COMMITTEE AGENDA

NEW ITEM

ITEM NO. 3– 21781...GRANT: HEALTHY, RESILIENT, AND SUSTAINABLE MATERIALS

Synopsis: Request authorization to apply for the EPA, Region 7, Healthy, Resilient, and Sustainable Materials Management Grant, submitted by Melissa Sieben, Assistant County Administrator.



Staff Request for Commission Action

Tracking No. 21781

Full Commission Meeting Date: 5/13/21

Committee: Public Works & Safety

Date of Standing Committee Action: 4/26/21

(If none, please explain):

Publication Required: No

<u>Date:</u>	<u>Contact Name:</u>	<u>Contact Phone:</u>	<u>Contact Email:</u>	<u>Department/Division:</u>
4/22/2021	Melissa Sieben	x5017	msieben@wycokck.org	Administrator's Office

Item Description:

About the grant:

The U.S. Environmental Protection Agency, Region 7 (EPA) is soliciting applications from eligible entities to improve community health, resiliency, and sustainability through source reduction, reuse, and recycling, key pillars of the EPA's Sustainable Materials Management (SMM) hierarchy. SMM (<https://www.epa.gov/smm>) is a systemic approach to using materials more productively over their life cycles. It represents a change in how our society thinks about the use of natural resources and environmental protection. The EPA anticipates making three to six (3-6) individual awards ranging from \$50,000 to \$200,000, each with a project period of up to two (2) years. Awards will be incrementally funded in FY 2021 and FY 2022 subject to funding availability, satisfactory performance, and other applicable considerations.

Proposed Project Summary:

The goal of this project is to develop a sustainable organics management system that addresses multiple waste streams currently being landfilled from the Unified Government: biosolids, tree and yard debris, and food waste. The project would include a formal feasibility study of a compost facility to analyze the use of WWTP biosolids, BPU tree trimmings, residential yard trimmings, and food waste. The study will also evaluate the end use of the compost for citizen use, Parks and Recreation beautification projects, Public Works projects, a potential County tree nursery, and marketability for land application. The feasibility study will include planning level capital and operating costs for development and operation of proposed facility and a site evaluation. The proposed project would include stakeholder engagement and the exploration of a public/private partnership for shared accountability toward a more sustainable future.

Additional statistics:

Through evaluating the feasibility of a composting facility, Unified Government would identify the number of recyclable tons of biosolids from its facilities, number of tons of yard trimmings from the community, and provide a solution for food waste in the waste stream. Composting food waste, rather than landfilling it, would elevate the sustainability of the material up the EPA Food Waste Hierarchy by creating a nutrient rich soil amendment, reducing methane gas production in landfills, and save resources.

Action Requested:

Approve

Budget Impact: (if applicable)

Amount:

Source:

Included In Budget:

Other (explain):

Attachments List:

Blue Sheet



Staff Request for Commission Action

Tracking No. 21774

Full Commission Meeting Date: 5/13/21

Committee: Public Works & Safety

Date of Standing Committee Action: 4/26/2021

(If none, please explain):

Publication Required: Yes 5/20/2021

<u>Date:</u> 4/13/2021	<u>Contact Name:</u> Jeff Fisher	<u>Contact Phone:</u> x5415	<u>Contact Email:</u> jfisher@wycokck.org	<u>Department/Division:</u> Public Works
<u>Item Description:</u> Public Works staff recommends updates to the ordinance to comply with the requirements of the 2020 KDHE MS4 Permit and comments made by the EPA related to the Unified Government's Pretreatment Program. The proposed changes clarify and update the current set of ordinances to assist staff and the UG in complying with these requirements.				
<u>Action Requested:</u> For approval				
<u>Budget Impact: (if applicable)</u> Amount: Source: Included In Budget: Other (explain):				
<u>Attachments List:</u> Chapter.8.Ordinance.Revision.Memo, Land.Disturbance.Post.Construction.Ordinance, ArticleXIV.XV.Redline				



**LEGAL DEPARTMENT of the UNIFIED GOVERNMENT OF
WYANDOTTE COUNTY/KANSAS CITY, KANSAS**

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SUMMARY

TO: Governing Body of the Unified Government of Wyandotte
County/Kansas City, Kansas

FROM: Misty Brown

DATE: April 14, 2021

RE: Proposed Changes to Article XIV and XV of Chapter 8 of the Code of Ordinances

Legislative Background:

- On May 20, 2013, the Unified Government and the State of Kansas entered into a federal Partial Consent Decree (“PCD”) with the Department of Justice on behalf of the United States Environmental Protection Agency. The PCD required the parties to develop and implement after EPA’s approval an Integrated Overflow Control Plan (“IOCP”).
- On March 23, 2020, the parties finalized the IOCP which requires the Unified Government to improve its sewer and storm water systems.
- The NPDES MS4 Permit issued in 2019, addresses the Municipal Separated Storm Sewer System and requires the Unified Government to develop a Stormwater Management Plan (SMP) to reduce stormwater pollution to the maximum extent practicable.

- The MS4 Permit requires the Unified Government to provide sufficient legal authority to comply with and administer the programs set out in the SMP.
- The Unified Government had legal authority in place prior to the 2019 MS4 Permit, but there were areas in which additional clarification and revisions were required to properly implement the programs outlined in the SMP.
- The proposed ordinance repeals Article XIV which pertains to land disturbance and Article XV which addresses Post-Construction Stormwater Treatment.
- New Articles XIV and XV were drafted to better clarify requirements and to more fully comply with the spirit of the MS4 Permit and the EPA.
- A redline version of Articles XIV and XV are attached to this Memo. The reorganization of the Articles resulted in so many changes that it was difficult to read. It was determined that it would be cleaner to repeal both Articles and adopt new Articles.

Summary of Proposed Changes:

- Re-aligned the organization to more closely follow the EPA model ordinance.
- Numerous definitions and abbreviations were added, modified or eliminated to the Ordinances.
- The enforcement provisions of the Ordinances were enhanced to improve clarity, consistency among Articles, and improve the Unified Government's ability to enforce the provisions.
- The violations and penalty sections of the Ordinances were amended to enhance enforcement, align with other Articles for consistency and better match the requirements set by KDHE and EPA.
- Administration sections were changed to clarify authority.
- The inspection requirements were formalized.
- The ordinance sets out easement requirements for Stormwater Treatment Facilities to ensure that the Unified Government has access to inspect and maintain the facilities as necessary.

(Published _____)

ORDINANCE NO. _____

AN ORDINANCE relating to regulations, provisions, and standards for the protection of surface waters through the regulation of land disturbance activities, and the construction and maintenance of post-construction stormwater treatment facilities in Kansas City, Kansas; repealing original Articles XIV and XV of Chapter 8 the Code of the Unified Government of Wyandotte County/ Kansas City, Kansas and replacing with new Articles XIV and XV.

WHEREAS, the Unified Government of Wyandotte County/Kansas City, Kansas has entered into a federal consent decree with the United States Environmental Protection Agency and the State of Kansas; and

WHEREAS, the Unified Government is required to adopt and maintain ordinances authorizing the Unified Government to inspect, assess penalties, issue enforceable orders and stop-work orders and other such acts required to effectively administer an Illicit Discharge Program, Industrial Stormwater Management Program, Construction Site Stormwater Management Program and Post-Construction Stormwater Management Program; and

WHEREAS, the Unified Government of Wyandotte County/Kansas City, Kansas wishes to update regulations, provisions, and standards for the protection of surface waters through the regulation both land disturbance activities and construction and maintenance of post-construction stormwater treatment facilities in Kansas City, Kansas to ensure compliance with federal EPA requirements; and

WHEREAS, the Unified Government of Wyandotte County/Kansas City, Kansas wishes to modify it regulations, provisions, and standards for the disposal of and discharge prohibitions, to comply with federal EPA requirements and Kansas Department of Health and Environment (KDHE) Municipal Separated Storm Sewer System (MS4) Permit requirements.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE
UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:**

Section 1. That Article XIV of Chapter 8 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and is hereby repealed and replaced with a new Article XIV which shall read as follows:

ARTICLE XIV. LAND DISTURBANCE.

Sec. 8-610. General Provisions.

(a) Finding of Facts

(1) It is hereby determined that:

During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

- (2) 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 and construction sites.

(b) Purposes of article

- (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 National Pollutant 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 municipal separate storm sewer system (MS4), and the Unified Government is therefore obligated by federal law to develop, implement, and enforce minimum Erosion and Sediment Control standards in compliance with the Unified Government's Kansas Water Pollution Control General 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 MS4; protecting natural stream assets; and protecting and, where possible, enhancing valuable natural water resources. These public interests are furthered by regulating

land disturbance, stripping and soil storage in connection with the clearing and grading of land for construction-related or other purposes. The time critical nature of temporary construction controls is hereby recognized by the Unified Government. 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 controlling erosion, sedimentation, and related environmental damage caused by construction related activities. This is furthered by implementing and enforcing a program regulating Land Disturbance and Construction activities related to grading and to control Erosion and Sediment resulting from these activities.

(c) Applicability

- (1) Persons undertaking any land disturbance activity within the limits of the City including the clearing, grading, excavating, filling, storing, and disposing of soil and earth material, shall comply with the requirements and standards set forth and provided in this article.
- (2) Regardless of whether or not a Land Disturbance activity requires a Permit, any person engaged in any Land Disturbance activities within the limits of the City shall comply with this Ordinance. Persons shall employ BMP methods for Erosion and Sediment Control in proportion to the scale of the activity to reduce the amount of Sediment or other pollutants in stormwater discharges associated with those activities to the maximum extent practicable.
- (3) Persons engaging in any land disturbance activity or any other action that may cause or permit soil movement shall prevent, to the maximum extent practicable, any amount of soil, earth, sand, gravel, rock, stone, or other material, to be deposited upon or to roll, flow, or wash upon or over any public street, street improvement, road, alley, sewer, storm drain, watercourse, right-of-way, any public property or the adjacent private property.
- (4) Persons hauling soil, earth, sand, gravel, rock, stone, or other material over any public street, road, alley, or public property, shall not allow those materials to blow, spill or be tracked over and upon any street, road, alley, or public property or adjacent private property.

(d) Compatibility and Severability

- (1) This ordinance 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 ordinance should be considered minimum requirements, and where any provision of this ordinance 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) Neither this article nor any decision made with respect hereto exempts the applicant or any other person from other requirements of this Code, or from state and federal laws, or from procuring other required permits, nor do they 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.
- (3) If the provisions of this article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgement shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

Sec. 8-611. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved plan means drawings or other documents that have been submitted by an applicant as a prerequisite to obtaining a land disturbance permit and that contain the information and specifications required by the unified government engineer to minimize off-site sedimentation from land disturbance activities and that have been approved by the unified government as complying with the provisions of this article.

Applicant means any person who makes application for a land disturbance permit, as required by this article.

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.

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.

Clearing means any act by which vegetative cover, structures or surface material is removed, including, but not limited to, root mat or topsoil removal.

County Administrator means the individual appointed by the mayor/CEO of the Unified Government as the Unified Government County Administrator or his designee.

County Engineer means the individual appointed by the County Administrator as county engineer or his or her designee.

Design criteria means the erosion and sediment control design criteria adopted in writing, as authorized by section 8-613(a)(2).

Development 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.

Director of Urban Planning and Land Use means the individual appointed by the County Administrator as Unified Government Director of urban planning and land use or his or her designee.

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.

Grading means any act by which soil is cleared, stripped, moved, leveled, stockpiled, or any combination thereof, and includes the conditions that result from that act.

Land disturbance activity means any act 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.

Licensed land surveyor means an individual who is duly licensed by the state board of technical professions, pursuant to K.S.A. 74-7001 et seq., to practice surveying.

Maximum extent practicable means the result of the use of those best management which, based on sound engineering and hydro-geological principles, will, to the greatest degree possible, given all relevant considerations, including technology, climate and site conditions, prohibit erosion and sedimentation during and after development.

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.

Notice of Violation means a written notice from the County Engineer of deficiencies in the sediment and erosion control management of the site.

Permit means the land disturbance permit issued by the Unified Government authorizing land disturbance activities in accordance with the requirements of this article.

Permittee means any person to whom a land disturbance permit is issued pursuant to this article.

Permittee's agent means any representative, contractor, foreman, or superintendent who acts at the instruction of, or with the permission of, or to the benefit of the permittee.

Person means 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, 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.

Stormwater Pollution Prevention Plan (SWPP) 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.

Professional engineer means an engineer duly licensed by the 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 recorder of deeds.

Qualified erosion control professional means a natural person with at least one of the following qualifications:

- (1) A certified professional in erosion and sediment control, certified by CPESC, Inc.
- (2) A professional engineer who has received a minimum of 12 hours' classroom instruction in sediment and erosion control taught by a certified professional erosion control specialist.
- (3) A landscape architect duly licensed by the state board of technical professions to practice landscape architecture who has received a minimum of 12 hours' classroom instruction in sediment and erosion control taught by a certified professional erosion control specialist.

Sediment means soils or other materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.

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 land disturbance activity is proposed in an application or which would require a land disturbance permit under this article.

Slope means the inclined surface of a fill, excavation, or natural terrain.

Soil means a natural mixture of mineral and organic particles bound to one another only by gravity or ionic bonds that is found on the immediate surface of the earth.

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

Storm drain means any enclosed structure for the conveyance of storm water runoff, including culverts, box culverts, storm sewer mains, or tunnels.

Stripping means any activity by which the vegetative cover is removed or significantly disturbed, including tree removal, clearing, grubbing and storage, or removal of topsoil.

Unified Government means the Unified Government of Wyandotte County/Kansas City, Kansas.

Vegetative cover means any grasses, shrubs, trees and other vegetation that hold and stabilize soils.

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.

Sec. 8-612. Administration.

- (a) **Authority.** The County Engineer shall be responsible for the administration of this Ordinance. The County Engineer shall have the authority to adopt, promulgate and amend regulations, policies and procedures as necessary for the enforcement of this Ordinance including the establishment, assessment and amendment of administrative fees. The County Engineer may waive the requirements for maps, plans, reports or drawings, if the County Engineer finds that the information otherwise submitted or to be submitted will be sufficient to show that the proposed work will be sufficient to show that the proposed work will conform to the requirements of this Ordinance. Furthermore, the County Engineer may delegate any or all of his or her duties under this Article.
- (b) **Right of Entry.** Whenever the County Engineer has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Ordinance, the County Engineer is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this Ordinance. If entry is refused, the County Engineer shall have recourse to the remedies provided by law to secure entry. Furthermore, in making an application for a permit, the applicant or the property owner performing or allowing the work grants to the Unified Government a right to enter the site 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.

Sec. 8-613. Land Disturbance Permit.

- (a) **Permit required.** No person may engage in any land disturbance activity, including persons engaged in land disturbance activity related to utility installation or maintenance, without first obtaining a land disturbance permit from the unified government, except as provided in this article. Any land disturbance permit shall encompass all land disturbance activity at the locations and during the times covered by the permit, whether such land disturbance activity is performed by the permittee, his or her contractor or subcontractors, a utility or its contractors, or any other independent agent. The permit fee shall be doubled for sites where land disturbance has occurred without a permit in violation of this article.
- (b) **Permit Issuance.** The issuance of a permit shall constitute an authorization to do only that work described in the permit or shown on the approved plan. All work shall be completed in strict compliance with the requirements of this article. A copy of the approved plan and the permit must be available on the site for inspection by the County Engineer. Field markings showing limits of disturbance must be on site during all installation of erosion and sediment control measures, construction, or other land disturbance activities.

- (c) Other construction permits delayed. When a person is developing a site and a permit is required in accordance with this article, no other construction permits shall be issued to make improvements on that site until the person has secured a land disturbance permit for the same site.
- (d) Exemptions. A permit is not required under this article for the following:
 - (1) Any land disturbance activity that, in the course of the subject development, disturbs or will disturb a cumulative total of less than one acre of surface area; provided that none of the following scenarios exist:
 - (a) Land disturbance is proposed within (50) feet of a natural or improved Channel or drainage way.
 - (b) Building Construction of new roofed structures of more than one thousand (1,000) square feet on a Site.
 - (c) Land disturbance that includes 50 cubic yards or more of fill.
 - (2) All land farming operations, including plowing or tilling of land for the purpose of crop production or the harvesting of crops on land located in the agricultural districts, including AG and AG (county) zoning districts;
 - (3) Existing nursery operations conducted as a permitted main or accessory use;
 - (4) Any noncommercial garden in any zone that disturbs less than one acre of surface area; or
 - (5) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- (e) Application.
 - (1) To obtain a permit, the property owner of the site where the land disturbance activity is to be performed or the property owner's authorized representative first must submit a complete application in writing upon forms prescribed by the unified government.
 - (2) Each application shall bear the name(s) and address(es) of the property owner and developer of the site , and of any consulting firm retained by the applicant together with the name of the applicant's principal contact and shall be accompanied by a filing fee. A land disturbance permit will only be issued in the name of the current property owner.
 - (3) A Qualified Erosion Control Professional shall be identified on every permit as a responsible party who the Unified Government official may contact regarding installation, maintenance, notice of violations and removal of erosion and sediment control measures and to ensure that all work is completed in compliance with the SWPPP and all requirements of the Land Disturbance Permit approved by the Unified Government. The permit holder is responsible for timely written notification to the Unified Government of any changes to the Qualified Erosion Control Professional.
 - (4) The property owner may designate, in writing, others to act on his or her behalf, however, the responsibility for compliance shall remain with the property owner until the issued permit has been officially closed.

- (5) The Land Disturbance activity described in the Land Disturbance Permit application shall be commenced within the time limits defined on the application.
 - (6) Application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan and that a certified contractor shall be on site on all days when construction or grading activities take place.
- (f) Review and approval. The County Engineer will review each application to determine its conformance with the provisions of this article and the erosion and sediment control design criteria authorized hereby. The County Engineer shall, in writing:
- (1) Approve the permit application if the application complies with all the requirements of this article and the County Engineer determines that best management practices will be employed to control erosion and sedimentation to the maximum extent practicable;
 - (2) Approve the permit application subject to conditions, as herein authorized, as may be reasonably necessary to secure the objectives of this article or prevent the creation of a nuisance or an unreasonable hazard to persons or to public or private property, and issue the permit subject to these conditions; or
 - (3) Disapprove the permit application, indicating, in writing, the reason therefore.
- (g) Conditions of approval. In approving the issuance of any permit, the County Engineer may impose conditions as may be reasonably necessary to secure the objectives of this article or prevent the creation of a nuisance or unreasonable hazard to persons or to public or private property. These conditions may include, but are not limited to:
- (1) The granting (or securing from others) and the recording in county land records of easements for drainage facilities, including the acceptance of their discharge on the property of others, and for the maintenance of slopes or erosion control facilities;
 - (2) Adequate control of dust by watering, or other control methods acceptable to the County Engineer;
 - (3) Improvements of any existing grading, ground surface or drainage condition on the site (not to exceed the area as proposed for work or development in the application) to meet the standards required under this article for land disturbance, drainage and erosion control;
 - (4) Installation of additional safety related devices when in the proximity of an elementary school, playground or other areas where small children may congregate without adult supervision;
 - (5) Stormwater pollution prevention plan and any other conditions believed necessary to protect the general public's health, safety, and welfare; and
 - (6) Liability insurance if, in the opinion of the County Engineer, the nature of the work is such that it may create a hazard to human life or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other private or public property, then the County Engineer may, before issuing the permit, require the applicant to file a certificate of liability insurance. That certificate must be

with an insurer admitted to do business in the state. The amount shall not be less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The insurance shall protect the permittee and the unified government from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of permittee, its employees, agents, or subcontractors. The values noted above may be adjusted at the discretion of the County Engineer based on the exposure and risk involved in the project. Neither issuance of a permit, nor compliance with these provisions or any condition imposed by unified government relieves any person from any responsibility for damage to persons or property otherwise imposed by law, nor imposes any liability upon the unified government for damages to persons or property.

(h) Assignment or transfer.

- (1) The permittee may request that the permit be transferred to another party. The transfer of a permit from one party to another shall be subject to the approval of the County Engineer and not be effective until written approval is issued.
- (2) If the permittee sells any portion of the property before the termination of the permit, the permittee will remain responsible for that portion of the property until the new property owner obtains a permit or until a completion certificate is issued for the portion sold.
- (3) A new owner of a portion of property covered by an approved plan with respect to which a completion certificate has not been issued, shall, before a building permit is issued, obtain a permit, if, and as, required by this article.

(i) Termination upon completion. To terminate the permit, the permittee shall submit a request to terminate permit form, as provided by the unified government, to the County Engineer. The County Engineer will then inspect the site and make a determination as to whether the permit can be terminated. The site will be considered stabilized when perennial vegetation, pavement, buildings, or structures using permanent materials cover all areas that have been disturbed. The permittee will be notified in writing of the determination. A certificate of occupancy (CO) or temporary certificate of occupancy (TCO) for a building permit may not be released until the Land Disturbance Permit is approved for Termination as a result of a successful final inspection.

Sec. 8-614. Erosion and Sediment Control Plan.

- (a) Erosion and Sediment Control Plan. All proposed Land Disturbance activity that requires a Permit in accordance with Section 8-613 of this Article shall be depicted on a site-specific Erosion and Sediment Control Plan. Land Disturbance activities that do not require a Permit in accordance with Section 8-613 are still required to employ applicable BMPs included in standard details provided by the Unified Government. Furthermore, at the County Engineer's discretion, if a Land Disturbance exceeds 3,000 square feet, then an Erosion and Sediment Control Plan may be required. The Erosion and Sediment Control

Plan shall include those items outlined in the Unified Government “Erosion Control Checklist” and “Guidelines for Preparing Erosion Control Drawings for Land Development”.

- (b) Preparation of Plans. Erosion and Sediment Control Plans submitted to the Unified Government for review must be prepared under the supervision of and sealed by a licensed professional engineer, landscape architect, or by a Qualified Erosion Control Professional. The County Engineer may waive this Plan preparation requirement if the Applicant's Plan consists entirely of utilizing standard plans and specifications as adopted in the Unified Governments Erosion and Sediment Control Standards.
- (c) Review and Approval of Erosion and Sediment Control Plans. The Erosion and Sediment Control Plan shall be of sufficient clarity to indicate the location, manner, nature and extent of the work proposed. The Plan shall clearly show that the proposed work will conform to the provisions of this Section, the Erosion and Sediment Control Standards, and other relevant laws, ordinances, policies, rules and regulations as determined by the County Engineer. The Director of Urban Planning and Land Use (Director) shall review the submitted documents to determine compliance with the Erosion and Sediment Control Standards. If the Director finds that the Plan is not in compliance, the Director shall advise the Applicant which elements of the Plan are not in compliance. All work must be performed in accordance with a sequence shown on the approved plan and/or work schedule or a revised sequence approved by the Director.
- (d) Modification of plan. Works shall be installed and maintained in accordance with the approved Plan.
 - (1) Modifications of the approved plan must be submitted to the unified government, and shall be processed in the same manner as the original plan, where:
 - (a) Field inspection or evaluation reveals the inadequacy of the approved plan to accomplish its erosion and sediment control objectives; or
 - (b) The permittee or permittee's agent finds that because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.
 - (2) When a modified plan is required the County Engineer or his or her designee, may require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage. Interim measures will remain in effect until modifications or revisions to the plan are approved and implemented.

Sec. 8-615. Inspections.

The County Engineer may perform inspections of the Land Disturbance site to verify compliance with the Erosion and Sediment Control Plan. Should it be found that Erosion and control methods

are ineffective or are not being maintained properly, the County Engineer may take enforcement actions described within this Chapter. The County Engineer has the right to waive inspections, except the final inspection.

In addition to its own inspections, the County Engineer may require that any portion of the construction of basins or structures be inspected and certified for structural integrity by a professional engineer at the permittee's expense. At the County Engineer's option, the permittee shall obtain the services of a qualified erosion control professional to inspect the sediment and erosion control installation to provide the unified government with a fully documented certification that all construction is done in accordance with the provisions of the approved plan, applicable rules, regulations and criteria.

- (a) **Secure Inspections.** The permit holder shall request an inspection from the County Engineer when work pursuant to the permit reaches the milestones set forth below. Requests for inspection shall be made at least 48 hours in advance (exclusive of Saturdays, Sundays, and Unified Government holidays) of the time the inspection is desired. Work shall not proceed past the milestones without request of inspection.
 - (1) Upon installation of initial erosion and sediment controls, and prior to proceeding with any other land disturbance activity. No Land Disturbance activities shall begin prior to approval from the County Engineer that all pre-construction Erosion and Sediment Control measures are correctly installed per the approved Plan.
 - (2) Prior to the removal or modification of any erosion and sediment control measure or practice;
 - (3) Immediately after the installation or modification of any erosion and sediment control measures required by the approved plan; and
 - (4) Upon restoration of disturbed areas, including establishment of ground covers and planting, installation of all vegetative measures, and all other work in accordance with the approved plan.
- (b) **Routine Inspection.** The Permit Holder shall ensure the entire construction site including but not limited to disturbed areas, BMPs, waste and construction storage areas, drainage areas, locations where stormwater can flow from the construction site, and permanent and temporarily stabilized areas is inspected on a regular schedule and, with the exception of Saturdays, Sundays, established Federal Holidays and the day after Thanksgiving, by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater as defined in the latest revision of Kansas Construction Stormwater General Permit No. S-MCST-1703-1. The frequency of regular inspections should be proportional to the amount of construction activity. The Permit Holder should increase the frequency of inspections when construction activity increases. Regularly scheduled inspections shall at a minimum be once every 14 days. For disturbed areas that have not been finally stabilized all installed BMPs and other pollution control measures shall be inspected for proper installation, operation and maintenance. Locations where stormwater runoff leaves the site shall be inspected for evidence of erosion or sediment deposition. Any deficiencies shall be noted in a report of the inspection and corrected within seven (7) calendar days of the inspection. Inspection reports shall be submitted to the County

Engineer upon request. The inspection report shall include the following minimum information:

- (1) Inspector's name;
- (2) Date of inspection;
- (3) Observations relative to the effectiveness of the BMPs;
- (4) Actions taken or necessary to correct deficiencies;
- (5) Listing of areas where construction operations have permanently or temporarily stopped; and
- (6) Observations of stormwater discharge locations with respect to the effectiveness of the upgradient BMPs. .

The inspection report shall be completed within 24 hours of the inspection and be signed by the Person performing the inspection.

- (c) Maintenance of Control Measures. All prescribed Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times. The permittee or the permittee's agent shall inspect and maintain, in good and effective condition, and promptly repair or restore all grade surfaces, diversions, barriers, drains, dams, walls and structures, plantings, vegetation, ground cover, erosion and sediment control measures, and other protective devices. Inspection, maintenance and repair or restoration shall be at the times and in the manner directed by the approved plan, permit and the design criteria, construction standards and regulations.
- (d) Closure of Land Disturbance Activities. Once the site is stabilized a final inspection shall be requested. The site shall be considered stabilized when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover all areas that have been disturbed. Perennial Vegetation shall be considered established and completed for stabilization when it has established a healthy and growing stand with a density of at least 70 percent (70%) of undisturbed areas at the site.
- (e) Removal of Temporary Erosion and Sediment Control Measures. Subsequent to a satisfactory final inspection of the Land Disturbance, all temporary Erosion and Sediment Control measures must be removed and the final segments of the storm sewer system shall be constructed in the manner described within the approved plans. Such removal shall be complete prior to closure of the Permit which authorized the Land Disturbance.

Sec. 8-616. Violations.

- (a) Violations: Any Land Disturbance activity that is commenced or is conducted contrary to this Ordinance, may be restrained by injunction or otherwise abated in a manner provided by law. Any person who violates a provision of this Ordinance, fails to comply with any of the

requirements therefore or fails to comply with a directive issued by the County Engineer is guilty of a public offense and shall be subject to penalties referenced in this section. The County Engineer shall be permitted to cite the property owner, or any/all Persons identified on the Permit as being legally responsible to the City for any violations of the Ordinance pertaining to that Permit.

- (b) Notice of Violation. When the County Engineer finds that a permit holder has violated, or continues to violate, any provision of this ordinance, or order issued hereunder, the County Engineer may serve a written Notice of Violation to the permittee or the Qualified Erosion Control Professional noted on the permit. Within a maximum of 3 business days of the date of the Notice, the violation shall be corrected at which time a re-inspection will occur to confirm that the violation has been fully remedied. 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.
 - (1) Except when an imminent hazard to the environment, public safety, or public or private property exists or where land disturbance activities are conducted without a permit or beyond the limits of disturbance covered in a permit, the County Engineer may issue a written notice of violation.
 - (2) Conditions that constitute a deficiency to be addressed by a notice of violation include:
 - (a) Any land disturbance activity that violates a condition or requirement of the permit, the approved plan or any provisions of this article or of the design criteria and regulations;
 - (b) Failure of the permittee to comply with any provisions of this article or of the design criteria and regulations; or
 - (c) Failure of the approved plan to achieve the required erosion and sediment control objective due to site characteristics or conditions.
 - (3) Corrective action, and time limits for compliance shall be based on the immediacy and severity of the potential hazard to the environment, public safety, and public or private property. The time limit may also be based on the compliance history of the permittee including the number of previous verbal identifications of deficiencies.
 - (4) Notice of violation shall be delivered to the permittee and/or permittee's contact persons, and/or Qualified Erosion and Sediment Control Professional noted on the application.
 - (5) Nothing in this section shall prohibit the County Engineer from verbally identifying minor deficiencies to responsible personnel on site. Verbal identification of deficiencies does not constitute a notice to violation for the

purpose of subsequent enforcement actions authorized in this Chapter.

Sec. 8-617. Enforcement.

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.

- (a) Notice of Violation. Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (1) That violating practices, or operations shall cease and desist;
 - (2) The abatement or remediation of the violation and the restoration of any affected property; and
 - (3) Payment of a penalty to cover administrative and remediation costs; and
 - (4) The implementation or maintenance of Erosion Control BMPs.
 - (5) Compliance with articles in this chapter
- (b) 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 for erosion control measures with materials, trash and/or sediment leaving an active construction site shall give a maximum of 3 business days to bring the site into compliance with the approved plan and the permit applicant shall also remedy (cleanup) said materials, trash and sediment that has left the site. If the violation poses an immediate risk to the health of the public, damage to property, or other serious hazard, immediate action shall be taken by the permittee or an alternative method of enforcement may be employed.

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:

- (1) *Form.* Notice shall be in writing and shall include the location and description of the Erosion Control system 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 construction site property owner/permittee of the right to appeal.
 - (2) *Service.* Notice may be delivered to the construction site property owner in person, or may be sent by certified mail, to the property owner at the address provided on the permit or address for the owner of record, or in any other manner as authorized by law. Method of delivery is at the option of the County Engineer.
- (c) Stop work orders.

- (1) At the discretion of the County Engineer, if the permittee fails to correct deficiencies identified in the notice of violation within the specified time, or if an imminent hazard to the environment, public safety, or public or private property exists, or if land disturbance activities requiring a permit are conducted without a permit or beyond the limits of disturbance covered in a permit, then the unified government may post the site with a stop work order, directing that all construction activity on the site cease immediately. In addition to posting on-site, the stop work order must also be delivered to the permittee, the permittee's agent on-site or by email or mail to the permittee's address listed on the application. The stop work order or accompanying notice must specify the limits affected by the stop work order and the conditions under which work may resume.
- (2) Except for work required to correct deficiencies identified in the stop work order, the permittee shall immediately stop all work regulated by any unified government permit on the site covered by the stop work order, whether or not a permit for such work has been issued. The permittee is responsible for the actions of permittee's agents and shall notify those agents when a stop work order is issued that will affect an area within which the agents are to work.
- (3) Once the land disturbance deficiencies are corrected the County Engineer shall lift the stop work order. Notice may be delivered to the permittee or permittee's agent on site or may be mailed to the permittee at the address listed on the application.

(d) Revocation of permit.

- (1) Permittees hold land disturbance permits pursuant to this article as a privilege and not as a right. The unified government reserves its right, as provided herein, to revoke any land disturbance permit, without refund of the permit fee, in the event of a breach of the terms and conditions of the land disturbance permit. A breach shall include but is not limited to the following:
 - (a) Violation of any material provision of the land disturbance permit;
 - (b) Evasion or attempt to evade any material provision of the land disturbance permit;
 - (c) Any material misrepresentation of any fact in the permit application;
 - (d) Failure to implement the soil, erosion and sediment control measures in a timely manner;
 - (e) Failure to correct a defect or condition indicated on an order issued pursuant to this article;
 - (f) Failure to secure inspection as required by any provisions of this article.
- (2) If the County Engineer determines that the permittee has committed a breach of a condition placed in the land disturbance permit, the County Engineer shall, prior to revocation of the permit issue a notice of default pursuant to section 8-617. The permittee's failure to take corrective action in the timeframe referenced above shall be cause for immediate revocation of the permit.

- (3) If a permit is revoked, the permittee shall also reimburse the unified government for the unified government's reasonable cost including administrative costs, restoration costs, the costs of collection and legal and attorneys' fees incurred in connection with such revocation.
 - (4) A revoked permit shall not be reinstated. A new permit application based on a revised plan that addresses the causes of nonperformance must be submitted. Such plan will be processed in the same manner as the original plan.
 - (5) The County Engineer may, in emergency situations require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage. Such measures will remain in effect until the new plan is approved and implemented.
- (d) Prosecution of violation. Whenever the County Engineer determines a construction site property 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.
- (e) Abatement and cost recovery. Whenever the County Engineer determines a construction site property 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 erosion control for the construction site prior to doing the work. Unified government is not obligated to seek the lowest cost for the corrective work. The construction site property 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 or approvals 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.
- (f) Prosecution of violation impairing and interfering. Whenever the County Engineer determines a construction site property owner is in violation of this article the County Engineer may, without prior notice, instigate appropriate proceedings at law to assess fines pursuant to section 8-618 penalties.
- (g) 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.
- (h) 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 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, property 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.

- (i) **Cost of abatement of the violation.** Within 30 days after abatement of the violation, the property owner 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.

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.

Sec. 8-618. 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 person has failed to comply with any provisions of this chapter or regulations, orders, permits or other legal requirements hereunder, the person 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 Person has violated, or continues to violate, any provision of this ordinance, The County Engineer may penalize such Person in an amount not to exceed \$1,000.00. Such penalties shall be assessed on a per-violation, per day basis.
 - (2) Persons 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 forty-five (45) days of being notified of the penalty. Where a request has merit, The County Engineer may convene a hearing on the matter. In the event the Person's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the Person. 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 Person.
- (e) The County Engineer may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any Person responsible for noncompliance. Such documents shall include specific action to be taken by the Person 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 ordinance.

Sec. 8-619. Appeals.

Unless otherwise provided, any person aggrieved by an action of the County Engineer issuing or refusing any permit, suspending or revoking any permit, or any other final action imposing affirmative or negative obligations on such person under this chapter may appeal such decision to the County Administrator or his or designee. No notice of violation under in this chapter, no requirement only for information or data concerning a regulated activity, and only actions of the County Engineer or health officer that impose 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 his or her designee may in his or her discretion either informally decide the appeal without a hearing or may hold a hearing at which such person may present his or her arguments and evidence. At any hearing held pursuant to this section, 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 shall be a jurisdictional prerequisite for judicial review of any action of the County Engineer.

Secs. 8-620—8-629. Reserved.

Section 2. That Article XV of Chapter 8 of the Code of the Unified Government of Wyandotte County/Kansas City, Kansas, be and is hereby repealed and replaced with a new Article XV which shall read as follows:

ARTICLE XV. – POST-CONSTRUCTION STORMWATER TREATMENT

Section 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 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 Ordinance 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 5000 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 5000 sf each) that has occurred since adoption of this Ordinance once the cumulative increase in impervious surface for a particular tract has exceeded the 5000 sf increase in impervious surface threshold.
 - (e) Land Disturbances for linear utility construction.
 - (f) Agricultural land uses.
 - (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 Ordinance are exempt from the provisions of this Chapter, but said developments remain subject to the previous version of this Ordinance. “Substantial or Significant Changes” to Development plans after June 1, 2021, must comply with this Ordinance 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 Ordinance, 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 Ordinance 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 ordinance 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 ordinance should be considered minimum requirements, and where any provision of this ordinance 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 ordinance 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 ordinance.
 - (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.

Section 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.

Section 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 Ordinance. 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.

Section 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 based on the requirements established by the Unified Government.

Section 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 Ordinance. 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.
 - i. 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.
 - ii. 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.

Section 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:

- (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% 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 (6) months of permanent stabilization of the entire land area served by the Facility. Land area served by the Facility shall mean those areas served by the Facility within the common plan of Development and shall not include 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 Sec. 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.

Section 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.

Section 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.

Section 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;
 - (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 be 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.
- (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 Ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this Ordinance.
- (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 (5) 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 thirty (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.

Section 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.

Section 8-640. Violations.

- (a) *Violations.* Any development activity that is commenced or is conducted contrary to this Ordinance, 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 ordinance, 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.

Section 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 Ordinance, 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
- (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.
- (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.

Section 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 ordinance, 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 forty-five (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 ordinance.

Section 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.

Sections 8-644-8-650. Reserved.

Section 3. This ordinance shall take effect and be in full force after its passage, approval, and publication in the official Unified Government newspaper.

**ADOPTED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED
GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS,**

THIS _____ DAY OF _____, 2021.

David Alvey, Mayor/CEO

ATTEST:

Unified Government Clerk

Approved as to form:

Misty S. Brown, Chief Counsel

Redline of Articles XIV and XV.

ARTICLE XIV. – LAND DISTURBANCE

Section 8-610 General regulationsProvisions

~~(a) — No person shall undertake any land disturbance activity or in any way disturb the surface of the land, except as provided in this article.~~

(a) Finding of Facts

(1) It is hereby determined that:

During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

(2) 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 and construction sites.

~~(b) — Any person engaging in any land disturbance activity or any other action that may cause or permit soil movement shall prevent, to the maximum extent practicable, any amount of soil, earth, sand, gravel, rock, stone, or other material, to be deposited upon or to roll, flow, or wash upon or over any public street, street improvement, road, alley, sewer, storm drain, watercourse, right-of-way, any public property or the premises of another.~~

(b) Purposes of article-[Formerly Section 8-611]

(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 National Pollutant Discharge Elimination System (NPDES) requirements to regulate stormwater discharge from Land Disturbance and Construction activities into the Unified Government's (UG) Stormwater Drainage Systems. The UG is subject to the NPDES requirements of federal law as an operator of a municipal separate storm sewer system (MS4), and the UG is therefore obligated by federal law to develop, implement, and enforce minimum Erosion and Sediment Control standards in compliance with the UG's Kansas Water Pollution Control General 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 MS4; protecting natural stream assets; and protecting and, where possible, enhancing valuable natural water resources. These public interests are furthered by regulating land disturbance, stripping and soil storage in connection with the clearing and grading of land for construction-related or other purposes. The time critical nature of temporary construction controls is hereby recognized by the Unified Government. 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 controlling erosion, sedimentation, and related environmental damage caused by construction related activities. This is furthered by implementing and enforcing a program regulating Land Disturbance and Construction activities related to grading and to control Erosion and Sediment resulting from these activities.

~~(e) Any person hauling soil, earth, sand, gravel, rock, stone, or other material over any public street, road, alley, or public property, shall not allow those materials to blow, spill or be tracked over and upon any street, road, alley, or public property or adjacent private property.~~

(c) Applicability [Formerly 8-610]

- (1) Persons undertaking any land disturbance activity including the clearing, grading, excavating, filling, storing, and disposing of soil and earth material, shall comply with the requirements and standards set forth and provided in this article.
- (2) **Regardless of whether or not a Land Disturbance activity requires a Permit, any person engaged in any Land Disturbance activities shall comply with this Ordinance. Persons shall employ BMP methods for Erosion and Sediment Control in proportion to the scale of the activity to reduce the amount of Sediment or other pollutants in stormwater discharges associated with those activities to the maximum extent practicable.**
- (3) Persons engaging in any land disturbance activity or any other action that may cause or permit soil movement shall prevent, to the maximum extent practicable, any amount of soil, earth, sand, gravel, rock, stone, or other material, to be deposited upon or to roll, flow, or wash upon or over any public street, street improvement, road, alley, sewer, storm drain, watercourse, right-of-way, any public property or the ~~premises of another~~ **adjacent private property.**
- (4) Persons hauling soil, earth, sand, gravel, rock, stone, or other material over any public street, road, alley, or public property, shall not allow those materials to blow,

spill or be tracked over and upon any street, road, alley, or public property or adjacent private property.

~~(d) — This article shall apply to all land disturbance activities within the limits of the city as it existed on September 30, 1997.~~

(d) Compatibility and Severability

- (1) This ordinance 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 ordinance should be considered minimum requirements, and where any provision of this ordinance 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) [Formerly 8-619(a)(1)] Neither this article nor any decision made with respect hereto exempts the applicant or any other person from other requirements of this Code, or from state and federal laws, or from procuring other required permits, nor do they 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.
- (3) [Formerly 8-619(b)] *Severability* If the provisions of this article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgement shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

(Ord. No. O-125-06, § 1(8-610), 12-14-2006)

Section 8-611. Definitions ~~Purpose of article.~~ [Formerly 8-612]

- ~~(a) — The purpose of this article is to protect and further the public interest by: promoting the coexistence of the natural environment and quality, planned development; assisting in the unified government's efforts to comply with the National Pollutant Discharge Elimination System (NPDES) regulations issued by the National Environmental Protection Agency and administered by the state department of health and environment and the unified government's NPDES stormwater permit; providing effective stormwater management; protecting property from damage due to flooding and erosion; improving water quality and reducing water pollution; controlling construction site impacts on stormwater; preventing nonstormwater discharges into the storm sewer system; protecting natural stream assets; and protecting and (where possible) enhancing valuable natural water resources. These public interests are furthered by regulating land disturbance, stripping and soil storage in connection with the clearing and grading of land for construction-related or other purposes. The time critical nature of temporary construction controls is hereby recognized by the unified government. 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 controlling erosion, sedimentation, and related environmental damage caused by construction-related or other activities.~~

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved plan means drawings or other documents that have been submitted by an applicant as a prerequisite to obtaining a land disturbance permit and that contain the information and specifications required by the ~~unified government~~ **County** Engineer to minimize off-site sedimentation from land disturbance activities and that have been approved by the unified government as complying with the provisions of this article.

Applicant means any person who makes application for a land disturbance permit, as required by this article.

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.

Clearing means any act by which vegetative cover, structures or surface material is removed, including, but not limited to, root mat or topsoil removal.

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

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

Design criteria means the erosion and sediment control design criteria adopted in writing, as authorized by section 8-612 (a).

Development 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.

Director of Urban Planning and Land Use means the individual appointed by the county administrator as Unified Government director of urban planning and land use or his or her designee.

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.

Grading means any act by which soil is cleared, stripped, moved, leveled, stockpiled, or any combination thereof, and includes the conditions that result from that act.

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.

Licensed land surveyor means an individual who is duly licensed by the state board of technical professions, pursuant to K.S.A. 74-7001 et seq., to practice surveying.

Maximum extent practicable means the result of the use of those best management practices which, based on sound engineering and hydro-geological principles, will, to the greatest degree possible, given all relevant considerations, including technology, climate and site conditions, prohibit erosion and sedimentation during and after development.

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.

Notice to comply of Violation means a written notice from the unified government ~~County~~ Engineer of deficiencies in the sediment and erosion control management of the site.

~~*Notice of default* means a written notice from the unified government County Engineer warning of further enforcement action including creation of lien or revocation of permit.~~

Permit means the land disturbance permit issued by the unified government authorizing land disturbance activities in accordance with the requirements of this article.

Permittee means any person to whom a land disturbance permit is issued pursuant to this article.

Permittee's agent means any representative, contractor, foreman, or superintendent who acts at the instruction of, or with the permission of, or to the benefit of the permittee.

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, 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.

Stormwater pollution prevention plan (SWPPP) 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.

Professional engineer means an engineer duly licensed by the 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 Register of Deeds.

Qualified erosion control professional means a natural person with at least one of the following qualifications:

- (1) A certified professional in erosion and sediment control, certified by CPESC, Inc.
- (2) A professional engineer who has received a minimum of 12 hours' classroom instruction in sediment and erosion control taught by a certified professional erosion control specialist.
- (3) A landscape architect duly licensed by the state board of technical professions to practice landscape architecture who has received a minimum of 12 hours' classroom instruction in sediment and erosion control taught by a certified professional erosion control specialist.

Sediment means soils or other materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.

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 land disturbance activity is proposed in an application or which would require a land disturbance permit under this article.

Slope means the inclined surface of a fill, excavation, or natural terrain.

Soil means a natural mixture of mineral and organic particles bound to one another only by gravity or ionic bonds that is found on the immediate surface of the earth.

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

Storm drain means any enclosed structure for the conveyance of storm water runoff, including culverts, box culverts, storm sewer mains, or tunnels.

Stripping means any activity by which the vegetative cover is removed or significantly disturbed, including tree removal, clearing, grubbing and storage, or removal of topsoil.

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.

~~*Unified government engineer* means the individual appointed by the county administrator as unified government engineer or his designee.~~

Vegetative cover means any grasses, shrubs, trees and other vegetation that hold and stabilize soils.

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-125-06, § 1(8-611), 12-14-2006)

Section 8-612. Administration ~~Definitions~~

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved plan means drawings or other documents that have been submitted by an applicant as a prerequisite to obtaining a land disturbance permit and that contain the information and specifications required by the unified government engineer to minimize off-site sedimentation from land disturbance activities and that have been approved by the unified government as complying with the provisions of this article.

Applicant means any person who makes application for a land disturbance permit, as required by this article.

Clearing means any act by which vegetative cover, structures or surface material is removed, including, but not limited to, root mat or topsoil removal.

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

Design criteria means the erosion and sediment control design criteria adopted in writing, as authorized by section 8-613(a)(2).

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.

Grading means any act by which soil is cleared, stripped, moved, leveled, stockpiled, or any combination thereof, and includes the conditions that result from that act.

Land disturbance activity means any act 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.

Licensed land surveyor means an individual who is duly licensed by the state board of technical professions, pursuant to K.S.A. 74-7001 et seq., to practice surveying.

Maximum extent practicable means the result of the use of those best management which, based on sound engineering and hydro-geological principles, will, to the greatest degree possible, given all relevant considerations, including technology, climate and site conditions, prohibit erosion and sedimentation during and after development.

Notice to comply means a written notice from the unified government engineer of deficiencies in the sediment and erosion control management of the site.

Notice of default means a written notice from the unified government engineer warning of further enforcement action including creation of lien or revocation of permit.

Permit means the land disturbance permit issued by the unified government authorizing land disturbance activities in accordance with the requirements of this article.

Permittee means any person to whom a land disturbance permit is issued pursuant to this article.

Permittee's agent means any representative, contractor, foreman, or superintendent who acts at the instruction of, or with the permission of, or to the benefit of the permittee.

Person means 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, a successor or assign of any of the foregoing, or any combination thereof.

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.

Professional engineer means an engineer duly licensed by the 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 recorder of deeds.

Qualified erosion control professional means a natural person with at least one of the following qualifications:

- (1) A certified professional in erosion and sediment control, certified by CPESC, Inc.
- (2) A professional engineer who has received a minimum of 12 hours' classroom instruction in sediment and erosion control taught by a certified professional erosion control specialist.
- (3) A landscape architect duly licensed by the state board of technical professions to practice landscape architecture who has received a minimum of 12 hours' classroom instruction in sediment and erosion control taught by a certified professional erosion control specialist.

Sediment means soils or other materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.

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 land disturbance activity is proposed in an application or which would require a land disturbance permit under this article.

Slope means the inclined surface of a fill, excavation, or natural terrain.

Soil means a natural mixture of mineral and organic particles bound to one another only by gravity or ionic bonds that is found on the immediate surface of the earth.

Storm drain means any enclosed structure for the conveyance of storm water runoff, including culverts, box culverts, storm sewer mains, or tunnels.

Stripping means any activity by which the vegetative cover is removed or significantly disturbed, including tree removal, clearing, grubbing and storage, or removal of topsoil.

Unified government engineer means the individual appointed by the county administrator as unified government engineer or his designee.

Vegetative cover means any grasses, shrubs, trees and other vegetation that hold and stabilize soils.

~~*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.~~

- (a) ~~Authority.~~ The County Engineer shall be responsible for the administration of this Ordinance. The County Engineer shall have the authority to adopt and amend regulations, policies and procedures as necessary for the enforcement of this Ordinance including the establishment, assessment and amendment of administrative fees. The County Engineer may waive the requirements for maps, plans, reports or drawings, if the County Engineer finds that the information otherwise submitted or to be submitted will be sufficient to show that the proposed work will be sufficient to show that the proposed work will conform to the requirements of this Ordinance. Furthermore, the County Engineer may delegate any or all of his or her duties under this Article.
- (b) ~~Right of Entry.~~ Whenever the County Engineer has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Ordinance, the County Engineer is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this Ordinance. If entry is refused, the County Engineer shall have recourse to the remedies provided by law to secure entry. Furthermore, in making an application for a permit, the applicant or the property owner performing or allowing the work grants to the Unified Government a right to enter the site 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.

(Ord. No. O-125-06, § 1(8-612), 12-14-2006; Ord. No. O-27-14, § 1, 4-10-2014)

[Formerly Sec. 8-614]Section 8-613. Land Disturbance Permit Administration

(a) ~~Supplemental requirements.~~

- (1) ~~Regulations.~~ The county administrator is hereby authorized to adopt and amend 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 unified government engineer.
 - (2) ~~Design criteria.~~ The unified government engineer is hereby authorized to adopt and amend standards for sediment and erosion control of disturbed sites. Copies of any such standards shall be available in the office of the unified government engineer.
 - (3) ~~Construction standards.~~ The unified government engineer is hereby authorized to adopt and amend construction standards for erosion and sediment controls. Copies of any such construction standards shall be available in the office of the unified government engineer.
- (b) ~~Unified government engineer.~~ The unified government engineer is the principal unified government official for administration of this article and its requirements. The unified government engineer may delegate any or all of his duties under this article.

- (e) ~~Unified government's right to enter.~~ In making an application for a permit, the applicant or the landowner performing or allowing the work grants to the unified government a right to enter the site 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.
- (a) Permit required. No person may engage in any land disturbance activity, including persons engaged in land disturbance activity related to utility installation or maintenance, without first obtaining a land disturbance permit from the unified government, except as provided in this article. Any land disturbance permit shall encompass all land disturbance activity at the locations and during the times covered by the permit, whether such land disturbance activity is performed by the permittee, his or her contractor or subcontractors, a utility or its contractors, or any other independent agent. The permit fee shall be doubled for sites where land disturbance has occurred without a permit in violation of this article.
- (b) Permit Issuance. The issuance of a permit shall constitute an authorization to do only that work described in the permit, or shown on the approved plan. All work shall be completed in strict compliance with the requirements of this article. A copy of the approved plan and the permit must be available on the site for inspection by the County Engineer. Field markings showing limits of disturbance must be on site during all installation of erosion and sediment control measures, construction, or other land disturbance activities.
- (c) Other construction permits delayed. When a person is developing a site and a permit is required in accordance with this article, no other construction permits shall be issued to make improvements on that site until the person has secured a land disturbance permit for the same site.
- (d) Exemptions. A permit is not required under this article for the following:
- (1) Any land disturbance activity that, in the course of the subject development, disturbs or will disturb a cumulative total of less than one acre of surface area; provided that none of the following scenarios exist:
 - (a) Land disturbance is proposed within (50) feet of a natural or improved Channel or drainage way.
 - (b) Building Construction of new roofed structures of more than one thousand (1,000) square feet on a Site.
 - (c) Land disturbance that includes 50 cubic yards or more of fill.
 - (2) All land farming operations, including plowing or tilling of land for the purpose of crop production or the harvesting of crops on land located in the agricultural districts, including AG and AG (county) zoning districts;
 - (3) Existing nursery operations conducted as a permitted main or accessory use.
 - (4) Any noncommercial garden in any zone that disturbs less than one acre of surface area; or
 - (5) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- (e) Application.

- (1) To obtain a permit, the property owner of the site where the land disturbance activity is to be performed or the property owner's authorized representative first must submit a complete application in writing upon forms prescribed by the unified government.
 - (2) Each application shall bear the name(s) and address(es) of the property owner and developer of the site , and of any consulting firm retained by the applicant together with the name of the applicant's principal contact and shall be accompanied by a filing fee. A land disturbance permit will only be issued in the name of the current property owner.
 - (3) A Qualified Erosion Control Professional shall be identified on every permit as a responsible party who the UG official may contact regarding installation, maintenance, notice of violations and removal of erosion and sediment control measures and to ensure that all work is completed in compliance with the SWPPP and all requirements of the Land Disturbance Permit approved by the Unified Government. The permit holder is responsible for timely written notification to the UG of any changes to the Qualified Erosion Control Professional.
 - (4) The property owner may designate, in writing, others to act on his or her behalf, however, the responsibility for compliance shall remain with the property owner until the issued permit has been officially closed.
 - (5) The Land Disturbance activity described in the Land Disturbance Permit application shall be commenced within the time limits defined on the application.
 - (6) Application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan and that a certified contractor shall be on site on all days when construction or grading activities take place.
- (f) Review and approval. The ~~unified government~~ County Engineer will review each application to determine its conformance with the provisions of this article and the erosion and sediment control design criteria authorized hereby. The ~~unified government~~ County Engineer shall, in writing:
- (1) Approve the permit application if the application complies with all the requirements of this article and the County Engineer determines that best management practices will be employed to control erosion and sedimentation to the maximum extent practicable;
 - (2) Approve the permit application subject to conditions, as herein authorized, as may be reasonably necessary to secure the objectives of this article or prevent the creation of a nuisance or an unreasonable hazard to persons or to public or private property, and issue the permit subject to these conditions; or
 - (3) Disapprove the permit application, indicating, in writing, the reason therefore.
- (g) Conditions of approval. In approving the issuance of any permit, the ~~unified government~~ County Engineer may impose conditions as may be reasonably necessary to secure the objectives of this article or prevent the creation of a nuisance or unreasonable hazard to persons or to public or private property. These conditions may include, but are not limited to:

- (1) The granting (or securing from others) and the recording in county land records of easements for drainage facilities, including the acceptance of their discharge on the property of others, and for the maintenance of slopes or erosion control facilities;
- (2) Adequate control of dust by watering, or other control methods acceptable to the County Engineer;
- (3) Improvements of any existing grading, ground surface or drainage condition on the site (not to exceed the area as proposed for work or development in the application) to meet the standards required under this article for land disturbance, drainage and erosion control;
- (4) Installation of additional safety related devices when in the proximity of an elementary school, playground or other areas where small children may congregate without adult supervision;
- (5) Stormwater pollution prevention plan and any other conditions believed necessary to protect the general public's health, safety, and welfare; and
- (6) Liability insurance if, in the opinion of the County Engineer, the nature of the work is such that it may create a hazard to human life or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other private or public property, then the County Engineer may, before issuing the permit, require the applicant to file a certificate of liability insurance. That certificate must be with an insurer admitted to do business in the state. The amount shall not be less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The insurance shall protect the permittee and the unified government from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of permittee, its employees, agents, or subcontractors. The values noted above may be adjusted at the discretion of the County Engineer based on the exposure and risk involved in the project. Neither issuance of a permit, nor compliance with these provisions or any condition imposed by unified government relieves any person from any responsibility for damage to persons or property otherwise imposed by law, nor imposes any liability upon the unified government for damages to persons or property.

(h) Assignment or transfer.

- (1) The permittee may request that the permit be transferred to another party. The transfer of a permit from one party to another shall be subject to the approval of the County Engineer and not be effective until written approval is issued.
- (2) If the permittee sells any portion of the property before the termination of the permit, the permittee will remain responsible for that portion of the property until the new property owner obtains a permit or until a completion certificate is issued for the portion sold.

- (3) A new owner of a portion of property covered by an approved plan with respect to which a completion certificate has not been issued, shall, before a building permit is issued, obtain a permit, if, and as, required by this article.
- (i) Termination upon completion. To terminate the permit, the permittee shall submit a request to terminate permit form, as provided by the unified government, to the County Engineer. The County Engineer will then inspect the site and make a determination as to whether the permit can be terminated. The site will be considered stabilized when perennial vegetation, pavement, buildings, or structures using permanent materials cover all areas that have been disturbed. The permittee will be notified in writing of the determination. **A certificate of occupancy (CO) or temporary certificate of occupancy (TCO) for a building permit may not be released until the Land Disturbance Permit is approved for Termination as a result of a successful final inspection.**

(Ord. No. O-125-06, § 1(8-613), 12-14-2006)

Section 8-614. **Erosion and Sediment Control Plan** ~~Land disturbance permit.~~

- (a) ~~Permit required.~~ No person may engage in any land disturbance activity, including persons engaged in land disturbance activity related to utility installation or maintenance, without first obtaining a land disturbance permit from the unified government, except as provided in this article. Any land disturbance permit shall encompass all land disturbance activity at the locations and during the times covered by the permit, whether such land disturbance activity is performed by the permittee, his contractor or subcontractors, a utility or its contractors, or any other independent agent. The permit fee shall be doubled for sites where land disturbance has occurred without a permit in violation of this article.
- (b) ~~Other construction permits delayed.~~ When a person is developing a site and a permit is required in accordance with this article, no other construction permits shall be issued to make improvements on that site until the person has secured a land disturbance permit for the same site.
- (c) ~~Exemptions.~~ A permit is not required under this article for the following:
- (1) Any land disturbance activity that, in the course of the subject development, disturbs or will disturb a cumulative total of less than one acre of surface area;
 - (2) All land farming operations, including plowing or tilling of land for the purpose of crop production or the harvesting of crops on land located in the agricultural districts, including AG and AG (county) zoning districts;
 - (3) Any noncommercial garden in any zone that disturbs less than one acre of surface area;
or
 - (4) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- (d) ~~Application.~~
- (1) To obtain a permit, the owner of the site where the land disturbance activity is to be performed or the site owner's authorized representative first must submit a complete application in writing upon forms acceptable by the unified government.

- (2) ~~A land disturbance permit will only be issued in the name of the current property owner.~~
- (e) ~~*Review and approval.* The unified government engineer will review each application to determine its conformance with the provisions of this article and the erosion and sediment control design criteria authorized hereby. The unified government engineer shall, in writing:~~
- ~~(1) Approve the permit application if the application complies with all the requirements of this article and the unified government engineer determines that best management practices will be employed to control erosion and sedimentation to the maximum extent practicable;~~
 - ~~(2) Approve the permit application subject to conditions, as herein authorized, as may be reasonably necessary to secure the objectives of this article or prevent the creation of a nuisance or an unreasonable hazard to persons or to public or private property, and issue the permit subject to these conditions; or~~
 - ~~(3) Disapprove the permit application, indicating, in writing, the reason therefore.~~
- (f) ~~*Conditions of approval.* In approving the issuance of any permit, the unified government engineer may impose conditions as may be reasonably necessary to secure the objectives of this article or prevent the creation of a nuisance or unreasonable hazard to persons or to public or private property. These conditions may include, but need are not limited to:~~
- ~~(1) The granting (or securing from others) and the recording in county land records of easements for drainage facilities, including the acceptance of their discharge on the property of others, and for the maintenance of slopes or erosion control facilities;~~
 - ~~(2) Adequate control of dust by watering, or other control methods acceptable to the director of the health department air quality division;~~
 - ~~(3) Improvements of any existing grading, ground surface or drainage condition on the site (not to exceed the area as proposed for work or development in the application) to meet the standards required under this article for land disturbance, drainage and erosion control;~~
 - ~~(4) Installation of additional safety related devices when in the proximity of an elementary school, playground or other areas where small children may congregate without adult supervision;~~
 - ~~(5) Pollution prevention plan and any other conditions believed necessary to protect the general public's health, safety, and welfare; and~~
 - ~~(6) Liability insurance if, in the opinion of the unified government engineer, the nature of the work is such that it may create a hazard to human life or endanger adjoining property or property at a higher or lower elevation, or any street or street improvement, or any other private or public property, then the unified government engineer may, before issuing the permit, require the applicant to file a certificate of liability insurance. That certificate must be with an insurer admitted to do business in the state. The amount shall not be less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The insurance shall protect the permittee and the unified government from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of permittee, its employees, agents, or subcontractors. Neither~~

issuance of a permit, nor compliance with these provisions or any condition imposed by unified government relieves any person from any responsibility for damage to persons or property otherwise imposed by law, nor imposes any liability upon the unified government for damages to persons or property.

~~(g) — Modification of plan.~~

- ~~(1) — Modifications of the approved plan must be submitted to the unified government, and shall be processed in the same manner as the original plan, where:
 - a. — Field inspection or evaluation reveals the inadequacy of the approved plan to accomplish its erosion and sediment control objectives; or
 - b. — The permittee or permittee's agent finds that because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.~~
- ~~(2) — When a modified plan is required the unified government engineer may require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage. Interim measures will remain in effect until modifications or revisions to the plan are approved and implemented.~~

~~(h) — Assignment or transfer.~~

- ~~(1) — If the permittee sells any portion of the property before the termination of the permit, the permittee will remain responsible for that portion of the property until the new owner of the property obtains a permit or until a completion certificate is issued for the portion sold.~~
- ~~(2) — A new owner of a portion of property covered by an approved plan with respect to which a completion certificate has not been issued, shall, before a building permit is issued, obtain a permit, if, and as, required by this article.~~

~~(i) — Termination upon completion. To terminate the permit, the permittee shall submit a request to terminate permit form, as provided by the unified government, to the unified government engineer. The unified government engineer will then inspect the site and make a determination as to whether the permit can be terminated. The site will be considered stabilized when perennial vegetation, pavement, buildings, or structures using permanent materials cover all areas that have been disturbed. The permittee will be notified in writing of the determination.~~

~~(j) — Revocation of permit.~~

- ~~(1) — Permittees hold land disturbance permits pursuant to this article as a privilege and not as a right. The unified government reserves its right, as provided herein, to revoke any land disturbance permit, without refund of the permit fee, in the event of a breach of the terms and conditions of the land disturbance permit. A breach shall include but is not be limited to the following:
 - a. — Violation of any material provision of the land disturbance permit;
 - b. — Evasion or attempt to evade any material provision of the land disturbance permit;
 - c. — Any material misrepresentation of any fact in the permit application;
 - d. — Failure to maintain the required insurance;~~

- e. ~~Failure to implement the soil, erosion and sediment control measures in a timely manner;~~
 - f. ~~Failure to correct a defect or condition indicated on an order issued pursuant to this article;~~
 - g. ~~Failure to secure inspection as required by any provisions of this article.~~
- (2) ~~If the unified government engineer determines that the permittee has committed a breach of a condition placed in the land disturbance permit, the unified government engineer shall, prior to revocation of the permit issue a notice of default pursuant to section 8-616(d). The permittee's failure to take corrective action shall be cause for immediate revocation of the permit.~~
 - (3) ~~If a permit is revoked, the permittee shall also reimburse the unified government for the unified government's reasonable cost including administrative costs, restoration costs, the costs of collection and legal and attorneys' fees incurred in connection with such revocation.~~
 - (4) ~~A revoked permit shall not be reinstated. A new permit application based on a revised plan that addresses the causes of nonperformance must be submitted. Such plan will be processed in the same manner as the original plan.~~
 - (5) ~~The unified government engineer may, in emergency situations require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage. Such measures will remain in effect until the new plan is approved and implemented.~~
- (k) ~~Appeals.~~
- (1) ~~Whenever a person shall deem themselves aggrieved by any decision or action taken by the unified government engineer acting under the authority of this article, the person may file an appeal with the county administrator with a copy to the engineer within ten calendar days of the date of notice of such decision or action.~~
 - (2) ~~The person shall be afforded a hearing on the matter before the county administrator or his designated representative within 30 days of filing the appeal. A written decision will be issued within 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 30 calendar days of the hearing.~~
 - (3) ~~In cases where compliance with the decision or action taken by the unified government engineer 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, or grant exceptions to, or waive requirements of, or grant a variance from a specific provisions than the county administrator may extend the time limit of such decision or action, or may grant exceptions to, or 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 8-611.~~

- (4) ~~Once an appeal has been taken, the order of the unified government engineer shall be stayed until a decision is rendered by the county administrator, unless the unified government engineer determines in writing that a stay will pose a threat to public safety, natural resources, other properties, or the integrity of the public infrastructure.~~
- (5) ~~Any such person shall have 30 days after the county administrator's written decision is issued to institute an action in the district court of the county. 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.~~

- (a) **Erosion and Sediment Control Plan.** All proposed Land Disturbance activity that requires a Permit in accordance with Section 8-613 of this Article shall be depicted on a site-specific Erosion and Sediment Control Plan. Land Disturbance activities that do not require a Permit in accordance with Section 8-613 are still required to employ applicable BMPs included in standard details provided by the City. Furthermore, at the County Engineer's discretion, if a Land Disturbance exceeds 3,000 square feet, then an Erosion and Sediment Control Plan may be required. The Erosion and Sediment Control Plan shall include those items outlined in the Unified Government – "Erosion Control Checklist" and "Guidelines for Preparing Erosion Control Drawings for Land Development".
- (b) **Preparation of Plans.** Erosion and Sediment Control Plans submitted to the City for review must be prepared under the supervision of and sealed by a licensed professional engineer, landscape architect, or by a Qualified Erosion Control Professional. The County Engineer may waive this Plan preparation requirement if the Applicant's Plan consists entirely of utilizing standard plans and specifications as adopted in the Unified Governments Erosion and Sediment Control Standards.
- (c) **Review and Approval of Erosion and Sediment Control Plans.** The Erosion and Sediment Control Plan shall be of sufficient clarity to indicate the location, manner, nature and extent of the work proposed. The Plan shall clearly show that the proposed work will conform to the provisions of this Section, the Erosion and Sediment Control Standards, and other relevant laws, ordinances, policies, rules and regulations as determined by the County Engineer. The Director of Urban Planning and Land Use (Director) shall review the submitted documents to determine compliance with the Erosion and Sediment Control Standards. If the Director finds that the Plan is not in compliance, the Director shall advise the Applicant which elements of the Plan are not in compliance. All work must be performed in accordance with a sequence shown on the approved plan and/or work schedule or a revised sequence approved by the Director.
- (d) **Modification of plan.** Works shall be installed and maintained in accordance with the approved Plan.
- (1) Modifications of the approved plan must be submitted to the unified government,

and shall be processed in the same manner as the original plan, where:

- (a) Field inspection or evaluation reveals the inadequacy of the approved plan to accomplish its erosion and sediment control objectives; or
 - (b) The permittee or permittee's agent finds that because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.
- (2) When a modified plan is required the ~~unified government~~ **County** Engineer or his or her designee, may require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage. Interim measures will remain in effect until modifications or revisions to the plan are approved and implemented.

Ord. No. O-125-06, § 1(8-614), 12-14-2006; Ord. No. O-27-14, § 1, 4-10-2014)

Section 8-615. Inspections. ~~Permittee's responsibility.~~

- (a) ~~Permit required; work to be performed in accordance with approved plan.~~ Land disturbance activity shall not proceed until a land disturbance permit has been issued by the unified government. All work must be performed in accordance with a sequence shown on the approved plan and/or work schedule or a revised sequence approved by the unified government engineer.
- (b) ~~Execute the approved plan.~~
 - (1) ~~The issuance of a permit shall constitute an authorization to do only that work described in the permit, or shown on the approved plan. All work shall be done in strict compliance with the requirements of this article.~~
 - (2) ~~A copy of the approved plan and the permit must be available on the site for inspection by the unified government engineer. Field markings showing limits of disturbance must be on site during all installation of erosion and sediment control measures, construction, or other land disturbance activities.~~
- (c) ~~Maintain protective devices.~~ The permittee or the permittee's agent shall inspect and maintain, in good and effective condition, and promptly repair or restore all grade surfaces, diversions, barriers, drains, dams, walls and structures, plantings, vegetation, plantings, ground cover, erosion and sediment control measures, and other protective devices. Inspection, maintenance and repair or restoration shall be at the times and in the manner directed by the approved plan, permit and the design criteria, construction standards and regulations.
- (d) ~~Secure inspections.~~
 - (1) ~~The permittee shall request an inspection from the unified government engineer when work pursuant to the permit reaches the milestones set forth in subsection (d)(2) of this section. Requests for inspection shall be made at least 48 hours in advance (exclusive of~~

~~Saturdays, Sundays, and unified government holidays) of the time the inspection is desired. Work shall not proceed past the milestones without request of inspection.~~

~~(2) The unified government engineer may inspect each site that has an approved plan as necessary to ensure that erosion and sediment control measures are installed and effectively maintained in compliance with the approved plan and permit. For each phase specified in the approved plan the permittee shall notify the unified government engineer at the following milestones:~~

~~a. Upon installation of initial erosion and sediment controls, and prior to proceeding with any other land disturbance activity;~~

~~b. Prior to the removal or modification of any erosion and sediment control measure or practice;~~

~~c. Immediately after the installation or modification of any erosion and sediment control measures required by the approved plan; and~~

~~Upon restoration of disturbed areas, including establishment of ground covers and planting, installation of all vegetative measures, and all other work in accordance with the approved plan.~~

~~(e) *Correct defects.* In addition to the permittee initiated inspections, maintenance and repair required in section 8-616(c), the permittee shall make corrections identified by the unified government engineer. Such corrections shall be identified in the notice to comply. The permittee shall make corrections within the time period specified in the notice to comply.~~

The County Engineer may perform inspections of the Land Disturbance site to verify compliance with the Erosion and Sediment Control Plan. Should it be found that Erosion and control methods are ineffective or are not being maintained properly, the County Engineer may take enforcement actions described within this Chapter. The County Engineer has the right to waive inspections, except the final inspection.

[Formerly 8-616(a)(2)] In addition to its own inspections, the ~~unified government~~ County Engineer may require that any portion of the construction of basins or structures be inspected and certified for structural integrity by a professional engineer at the permittee's expense. At the ~~unified government~~ County Engineer's option, the permittee shall obtain the services of a qualified erosion control professional to inspect the sediment and erosion control installation to provide the unified government with a fully documented certification that all construction is done in accordance with the provisions of the approved plan, applicable rules, regulations and criteria.

(a) Secure Inspections. The permit holder shall request an inspection from the County Engineer when work pursuant to the permit reaches the milestones set forth ~~in subsection (d)(2) of this section~~ below. Requests for inspection shall be made at least 48 hours in advance (exclusive of Saturdays, Sundays, and unified government holidays) of the time the inspection is desired. Work shall not proceed past the milestones without request of inspection.

(1) Upon installation of initial erosion and sediment controls, and prior to proceeding with any other land disturbance activity. **No Land Disturbance activities shall begin**

prior to approval from the County Engineer that all pre-construction Erosion and Sediment Control measures are correctly installed per the approved Plan.

- (2) Prior to the removal or modification of any erosion and sediment control measure or practice;
 - (3) Immediately after the installation or modification of any erosion and sediment control measures required by the approved plan; and
 - (4) Upon restoration of disturbed areas, including establishment of ground covers and planting, installation of all vegetative measures, and all other work in accordance with the approved plan.
- (b) **Routine Inspection.** The Permit Holder shall ensure the entire construction site including but not limited to disturbed areas, BMPs, waste and construction storage areas, drainage areas, locations where stormwater can flow from the construction site, and permanent and temporarily stabilized areas is inspected on a regular schedule and, with the exception of Saturdays, Sundays, established Federal Holidays and the day after Thanksgiving, by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater as defined in the latest revision of Kansas Construction Stormwater General Permit No. S-MCST-1703-1. The frequency of regular inspections should be proportional to the amount of construction activity. The Permit Holder should increase the frequency of inspections when construction activity increases. Regularly scheduled inspections shall at a minimum be once every 14 days. For disturbed areas that have not been finally stabilized all installed BMPs and other pollution control measures shall be inspected for proper installation, operation and maintenance. Locations where stormwater runoff leaves the site shall be inspected for evidence of erosion or sediment deposition. Any deficiencies shall be noted in a report of the inspection and corrected within seven (7) calendar days of the inspection. Inspection reports shall be submitted to the County Engineer upon request. The inspection report shall include the following minimum information:
- (1) Inspectors name.
 - (2) Date of inspection.
 - (3) Observations relative to the effectiveness of the BMPs.
 - (4) Actions taken or necessary to correct deficiencies.
 - (5) Listing of areas where construction operations have permanently or temporarily stopped.
 - (6) Observations of stormwater discharge locations with respect to the effectiveness of the upgradient BMPs.

The inspection report shall be completed within 24 hours of the inspection and be signed by the Person performing the inspection.

- (c) **Maintenance of Control Measures.** All prescribed Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times. The permittee or the permittee's agent shall inspect and maintain, in good and effective condition, and promptly repair or restore all grade

surfaces, diversions, barriers, drains, dams, walls and structures, plantings, vegetation, ground cover, erosion and sediment control measures, and other protective devices. Inspection, maintenance and repair or restoration shall be at the times and in the manner directed by the approved plan, permit and the design criteria, construction standards and regulations.

- (d) **Closure of Land Disturbance Activities.** Once the site is stabilized a final inspection shall be requested. The site shall be considered stabilized when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover all areas that have been disturbed. Perennial Vegetation shall be considered established and completed for stabilization when it has established a healthy and growing stand with a density of at least 70 percent (70%) of undisturbed areas at the site.
- (e) **Removal of Temporary Erosion and Sediment Control Measures.** Subsequent to a satisfactory final inspection of the Land Disturbance, all temporary Erosion and Sediment Control measures must be removed and the final segments of the storm sewer system shall be constructed in the manner described within the approved plans. Such removal shall be complete prior to closure of the Permit which authorized the Land Disturbance.

(Ord. No. O-125-06, § 1(8-615), 12-14-2006)

Section 8-616. Violations ~~Inspections and enforcement~~

~~(a) — Inspections.~~

- ~~(1) — The unified government engineer may inspect the work at the stages identified in section 8-615(d)(2). The unified government engineer may make additional inspections as he deems necessary. The unified government engineer has the right to waive inspections, except the final inspection as provided in section 8-614(i).~~
- ~~(2) — In addition to its own inspections, the unified government engineer may require that any portion of the construction of basins or structures be inspected and certified for structural integrity by a professional engineer at the permittee's expense. At the unified government engineer's option, the permittee shall obtain the services of a qualified erosion control professional to inspect the sediment and erosion control installation to provide the unified government with a fully documented certification that all construction is done in accordance with the provisions of the approved plan, applicable rules, regulations and criteria.~~

~~(b) — Notice to comply.~~

- ~~(1) — Except when an imminent hazard to the environment, public safety, or public or private property exists or where land disturbance activities are conducted without a permit or beyond the limits of disturbance covered in a permit, the unified government engineer shall issue a written notice to comply identifying sediment and erosion control deficiencies prior to the unified government initiating subsequent enforcement actions.~~
- ~~(2) — Conditions that constitute a deficiency to be addressed by a notice to comply include:~~

- a. ~~Any land disturbance activity that violates a condition or requirement of the permit, the approved plan or any provisions of this article or of the design criteria and regulations;~~
 - b. ~~Failure of the permittee to comply with any provisions of this article or of the design criteria and regulations; or~~
 - c. ~~Failure of the approved plan to achieve the required erosion and sediment control objective due to site characteristics or conditions.~~
- (3) ~~Corrective action, and time limits for compliance. Time limits shall be based on the immediacy and severity of the potential hazard to the environment, public safety, and public or private property and on the compliance history of the permittee including the number of previous verbal identifications of deficiencies.~~
- (4) ~~Notice to comply may be delivered to the permittee or permittee's agent on site, or may be mailed or faxed or sent electronically to the permittee at the address or fax number or electronic address listed on application. Method of delivery is at the option of the unified government engineer.~~
- (5) ~~Nothing in this section shall prohibit the unified government engineer from verbally identifying minor deficiencies to responsible personnel on site. Verbal identification of deficiencies does not constitute a notice to comply for the purpose of subsequent enforcement actions authorized in section 8-617(c) through (e).~~
- (c) ~~Stop work orders.~~
- (1) ~~If the permittee fails to correct deficiencies identified in the notice to comply within the specified time, or if an imminent hazard to the environment, public safety, or public or private property exists, or if land disturbance activities requiring a permit are conducted without a permit or beyond the limits of disturbance covered in a permit, then the unified government may post the site with a stop work order, directing that all construction activity on the site cease immediately. The stop work order or accompanying notice must specify the limits affected by the stop work order and the conditions under which work may resume.~~
- (2) ~~Except for work required to correct deficiencies identified in the stop work order, the permittee shall immediately stop all work regulated by any unified government permit on the site covered by the stop work order, whether or not a permit for such work has been issued. The permittee is responsible for the actions of permittee's agents and shall notify those agents when a stop work order is issued that will affect an area within which the agents are to work.~~
- (3) ~~A stop work order shall be delivered by posting a copy of the stop work order on the site of the land disturbance activity in reasonable proximity to a location where the land disturbance activity is taking place, or by delivery of the stop work order to the permittee's agent on site, or by mailing the stop work order to the permittee at the address listed on the application, or by combination of these methods.~~
- (4) ~~Once the land disturbance deficiencies are corrected the unified government engineer shall lift the stop work order. Notice may be delivered to the permittee or permittee's agent on site, or may be mailed to the permittee at the address listed on the application.~~

(d) — *Notice of default.*

- (1) — ~~If the deficiencies identified in the notice to comply are not corrected within the time limits, or if the deficiencies identified in a stop work order are not corrected within seven calendar days, or if the unified government engineer determines the permittee has committed a breach of a permit condition the unified government engineer may issue a written notice of default. Except when an imminent hazard to the environment, public safety, or public or private property exists, the unified government engineer shall issue a notice of default prior to revocation of the permit or to commencing work that would create a lien.~~
- (2) — ~~Contents of notice shall state, as a minimum:~~
 - a. — ~~Required corrective actions, and time limit for correction: the time limit shall not be less than seven calendar days from the date of postmark;~~
 - b. — ~~The unified government's right to correct the deficiency if not corrected within time limit;~~
 - c. — ~~The unified government's right to recover costs from the permittee or in the case that no permit has been issued the property owner; and~~
 - d. — ~~The unified government's right to revoke the permit with no further notice if the deficiency is not corrected within the time limit.~~
- (3) — ~~Notice of default may be delivered to the permittee or permittee's agent on site, or may be mailed to the permittee or faxed at the address or fax number or sent electronically to the electronic address listed on the application. Method of delivery is at the option of the unified government engineer. In the case that no permit has been issued the notice of default may be delivered to the property owner at the address of record.~~

(e) — *Unified government's right to correct and recover costs.*

- (1) — ~~If the deficiency is not corrected within the time limit established in the notice of default or if an imminent hazard to the environment, public safety, or public or private property exists, then the unified government or its agents may go on the land and correct the deficiencies. Work may be accomplished by contract or otherwise at the discretion of the unified government engineer. Unified government is not obligated to provide cost estimates of the corrective work to the permittee or property owner prior to doing the work. Unified government is not obligated to seek the lowest cost for the corrective work.~~
- (2) — ~~The property 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.~~

(f) — *Other actions and penalties.* ~~Other actions unified government may take are revocation of permit pursuant to section 8-614(j) and assessment of fines pursuant to section 8-618.~~

- (a) **Violations:** Any Land Disturbance activity that is commenced or is conducted contrary to this Ordinance, may be restrained by injunction or otherwise abated in a manner provided by law. Any person who violates a provision of this Ordinance, fails to comply with any of the requirements therefore or fails to comply with a directive issued by the County Engineer is guilty of a public offense and shall be subject to penalties referenced in this section. The County Engineer shall be permitted to cite the property owner, or any/all Persons identified on the Permit as being legally responsible to the City for any violations of the Ordinance pertaining to that Permit.
- (b) **Notice of Violation.** When the County Engineer finds that a permit holder has violated, or continues to violate, any provision of this ordinance, or order issued hereunder, the County Engineer may serve a written Notice of Violation to the permittee or the Qualified Erosion Control Professional noted on the permit. Within a maximum of 3 business days of the date of the Notice, the violation shall be corrected at which time a re-inspection will occur to confirm that the violation has been fully remedied. 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.
- (1) Except when an imminent hazard to the environment, public safety, or public or private property exists or where land disturbance activities are conducted without a permit or beyond the limits of disturbance covered in a permit, the County Engineer may issue a written notice of violation.
 - (2) Conditions that constitute a deficiency to be addressed by a notice of violation include:
 - (a) Any land disturbance activity that violates a condition or requirement of the permit, the approved plan or any provisions of this article or of the design criteria and regulations;
 - (b) Failure of the permittee to comply with any provisions of this article or of the design criteria and regulations; or
 - (c) Failure of the approved plan to achieve the required erosion and sediment control objective due to site characteristics or conditions.
 - (3) Corrective action, and time limits for compliance shall be based on the immediacy and severity of the potential hazard to the environment, public safety, and public or private property. The time limit may also be based on the compliance history of the permittee including the number of previous verbal identifications of deficiencies.
 - (4) Notice of violation shall be delivered to the permittee and/or permittee's contact persons, and/or Qualified Erosion and Sediment Control Professional noted on the

application.

- (5) Nothing in this section shall prohibit the County Engineer from verbally identifying minor deficiencies to responsible personnel on site. Verbal identification of deficiencies does not constitute a notice to violation for the purpose of subsequent enforcement actions authorized in this Chapter.

(Ord. No. O-125-06, § 1(8-616), 12-14-2006)

Section 8-617. Enforcement Regulations ~~applicable to all persons.~~

~~(a) — *Protection of sediment and erosion control devices.* No person shall remove, destroy, or otherwise impair the effectiveness of any sediment erosion control device installed as part of an approved plan or in compliance with section 8-618(c) except when an area protected is stabilized or as part of a plan modification under section 8-614(g). If any device must be temporarily removed for progress of the work, it shall be immediately restored.~~

~~(b) — *Fugitive materials.* If any soil, earth, sand, gravel, rock, stone, or other material is caused to be deposited upon or to roll, flow, or wash upon any public or private property in violation of section 8-610, whether such deposition is the result of land disturbance activity or of hauling, the person responsible shall cause the material to be removed from that property within 24 hours. In the event of an immediate danger to the public health or safety, the material must be removed immediately. If the fugitive material is not completely removed within the time limits, the unified government may, without notice, remove the material and may recover costs of removal from the property owner and/or the person responsible for the fugitive material. 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 all property and all rights to property, real or personal, of all persons responsible for the deposition of the material. These costs are in addition to the penalties prescribed for violation of section 35-598.~~

~~(c) — *Sites less than one acre.* Sediment and erosion control management on nonagricultural sites that due to limited area of land disturbance do not require a permit or approved plan shall follow the unified government's design guidelines and regulations for erosion and sediment control. Unified government enforcement for deficiencies may include all those identified in section 8-616.~~

~~(d) — *Agricultural uses.* Sites zoned agricultural and disturbed for the purpose commercial crop production are not required to have a permit. Topsoil conservation practices shall be applied to agricultural uses to the extent necessary to satisfy sections 8-610 and 8-611. Topsoil conservation measures include, standing crop residue, cover crops and increased rotational intensity to avoid fallow seasons, terracing, contour plowing, filter strips left at field edges, riparian buffers, and other methods identified as such by the Kansas State University Extension Service.~~

~~(e) — *Noninterference with stop work orders.* No person shall continue or allow the continuance of work in an area covered by a stop work order, except work required to correct deficiencies identified in the stop work order.~~

~~(f) — *Noninterference 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 erosion control measures or obstruct any representative of the land owner engaged in completing the work required under the permit and approved plan.~~

- (g) ~~*Protection of adjoining property.* Land disturbance activities shall not be conducted in such proximity to a property line that would endanger any adjoining property, including a public street, sidewalk, or alley. Adjoining properties shall be supported and protected from damage that may result from land disturbance activities including but not limited to subsidence settling, cracking, vegetative damage or any other damages.~~

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.

- (a) Notice of Violation. Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
- (1) That violating practices, or operations shall cease and desist;
 - (2) The abatement or remediation of the violation and the restoration of any affected property; and
 - (3) Payment of a penalty to cover administrative and remediation costs; and
 - (4) The implementation or maintenance of Erosion Control BMPs.
 - (5) Compliance with articles in this chapter
- (b) 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 for erosion control measures with materials, trash and/or sediment leaving an active construction site shall give a maximum of 3 business days to bring the site into compliance with the approved plan and the permit applicant shall also remedy (cleanup) said materials, trash and sediment that has left the site. If the violation poses an immediate risk to the health of the public, damage to property, or other serious hazard, immediate action shall be taken by the permittee or an alternative method of enforcement may be employed.

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:

- (1) *Form.* Notice shall be in writing and shall include the location and description of the Erosion Control system 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 construction site property owner/permittee of the right to appeal.
 - (2) *Service.* Notice may be delivered to the construction site property owner in person, or may be sent by certified mail, to the property owner at the address provided on the permit or address for the owner of record, or in any other manner as authorized by law. Method of delivery is at the option of the County Engineer.
- (c) Stop work orders. [Formerly 8-616 (c)]

- (1) **At the discretion of the County Engineer**, If the permittee fails to correct deficiencies identified in the notice of violation within the specified time, or if an imminent hazard to the environment, public safety, or public or private property exists, or if land disturbance activities requiring a permit are conducted without a permit or beyond the limits of disturbance covered in a permit, then the unified government may post the site with a stop work order, directing that all construction activity on the site cease immediately. In addition to posting on-site, the stop work order must also be delivered to the permittee, the permittees agent on-site or by email or mail to the permittee's address listed on the application. The stop work order or accompanying notice must specify the limits affected by the stop work order and the conditions under which work may resume.
- (2) Except for work required to correct deficiencies identified in the stop work order, the permittee shall immediately stop all work regulated by any unified government permit on the site covered by the stop work order, whether or not a permit for such work has been issued. The permittee is responsible for the actions of permittee's agents and shall notify those agents when a stop work order is issued that will affect an area within which the agents are to work.
- (3) Once the land disturbance deficiencies are corrected the County Engineer shall lift the stop work order. Notice may be delivered to the permittee or permittee's agent on site, or may be mailed to the permittee at the address listed on the application.

(d) Revocation of permit. [Formerly 8-614(j)]

- (1) Permittees hold land disturbance permits pursuant to this article as a privilege and not as a right. The unified government reserves its right, as provided herein, to revoke any land disturbance permit, without refund of the permit fee, in the event of a breach of the terms and conditions of the land disturbance permit. A breach shall include but is not limited to the following:
 - (a) Violation of any material provision of the land disturbance permit;
 - (b) Evasion or attempt to evade any material provision of the land disturbance permit;
 - (c) Any material misrepresentation of any fact in the permit application;
 - (d) Failure to implement the soil, erosion and sediment control measures in a timely manner;
 - (e) Failure to correct a defect or condition indicated on an order issued pursuant to this article;
 - (f) Failure to secure inspection as required by any provisions of this article.
- (2) If the ~~unified government~~ **County** Engineer determines that the permittee has committed a breach of a condition placed in the land disturbance permit, the ~~unified government~~ **County** Engineer shall, prior to revocation of the permit issue a notice of default pursuant to section 8-617. The permittee's failure to take corrective action in the timeframe referenced above shall be cause for immediate revocation of the permit.

- (3) If a permit is revoked, the permittee shall also reimburse the unified government for the unified government's reasonable cost including administrative costs, restoration costs, the costs of collection and legal and attorneys' fees incurred in connection with such revocation.
 - (4) A revoked permit shall not be reinstated. A new permit application based on a revised plan that addresses the causes of nonperformance must be submitted. Such plan will be processed in the same manner as the original plan.
 - (5) The ~~unified government~~ **County** Engineer may, in emergency situations require the installation of interim erosion and sediment control measures to protect stream channels, other properties, or the general public from damage. Such measures will remain in effect until the new plan is approved and implemented.
- (d) **Prosecution of violation.** Whenever the County Engineer determines a construction site property 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.
 - (e) **Abatement and cost recovery.** Whenever the County Engineer determines a construction site property 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 erosion control for the construction site prior to doing the work. Unified government is not obligated to seek the lowest cost for the corrective work. The construction site property 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 or approvals 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.
 - (f) **Prosecution of violation impairing and interfering.** Whenever the County Engineer determines a construction site property owner is in violation of this article the County Engineer may, without prior notice, instigate appropriate proceedings at law to assess fines pursuant to section 8-618 penalties.
 - (g) **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.
 - (h) **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 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, property 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.

- (i) **Cost of abatement of the violation.** Within 30 days after abatement of the violation, the property owner 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.

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-125-06, § 1(8-617), 12-14-2006)

Section 8-618. Penalties

~~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 \$250.00 and not more than \$1,000.00. Each day a violation occurs shall constitute a separate offense.~~

- (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 user has failed to comply with any provisions of this chapter or regulations, orders, permits or other legal requirements hereunder, the user 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 User has violated, or continues to violate, any provision of this ordinance, The County Engineer may penalize such User in an amount not to exceed \$1,000.00. Such penalties shall be assessed on a per-violation, per day basis.
 - (2) Users 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 forty-five (45) days of being notified of the penalty. Where a request has merit, The County Engineer may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. 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 User.
- (e) The County Engineer may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User 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 ordinance.

(Ord. No. O-125-06, § 1(8-618), 12-14-2006)

Section 8-619. Appeals ~~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 this Code, or from state and federal laws, or from procuring other required permits, nor do they 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 erosion and sedimentation. 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 safety and legally completing the project. Neither the issuance of a permit 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) ~~*Indemnification.* Anyone covered under the provisions of this ordinance shall fully indemnify, release, defend, and hold harmless the unified government and agents of the unified government when acting in their capacity as municipal officials, employees and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other persons for damages, losses, costs, and expenses, including attorneys' fees, to the extent caused by negligent acts or omissions of the permittee in the performance of the permitted work. The unified government agrees to timely notify permittee of such claim, demand, suit, proceeding, or action by providing written notice to permittee and the registered agent of the permittee. Nothing herein shall be deemed to prevent the unified government or any agent of the unified government from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the permittee from its duty to defend against liability or its duty to pay any judgment entered against the unified government or its agents.~~
- (d) ~~*Unified government failure to enforce.* The unified government's failure to enforce or remedy any noncompliance of the terms and conditions of this ordinance or of any permit granted under 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 article.~~
- (e) ~~*Reservations of rights.* In addition to any rights specifically reserved to the unified government by this article, 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 article.~~
- (a) 1991 Unless otherwise provided, any person aggrieved by an action of the County Engineer issuing or refusing any permit, suspending or revoking any permit, or any other final action imposing affirmative or negative obligations on such user under this chapter may appeal such decision to the County Administrator or his or designee. No notice of violation under in this chapter, no requirement only for information or data concerning a regulated activity, and only actions of the County Engineer or health officer that impose 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 his or her designee may in his or her discretion either informally decide the appeal without a hearing or may hold a hearing at which such person may present his or her arguments and evidence. At any hearing held pursuant to this section, 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 shall be a jurisdictional prerequisite for judicial review of any action of the County Engineer.

(Ord. No. O-125-06, § 1(8-619), 12-14-2006)

Secs. 8-620—8-629. - Reserved.

(Code 1988, § 30-5; Ord. No. O-46-05, § 1, 6-2-2005; Ord. No. O-27-14, § 3, 4-10-2014)

ARTICLE XV. – POST-CONSTRUCTION STORMWATER TREATMENT

Section 8-630 General ~~regulations~~Provisions

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

(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) — 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.~~

(b) Purposes of article [Formerly Section 8-631]

- (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) [Formerly 8-631(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 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 land. It is also the purpose of this article to encourage responsible development and minimize the costs of development.
- (3) [Formerly 8-631(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.
- (4) [Formerly 8-631(c)] This article establishes minimum requirements for post-construction stormwater treatment on any new development or redevelopment of land.
- (5) [Formerly 8-631(d)] This article establishes registration, maintenance and reporting requirements on any owner of any private stormwater treatment facility.
- ~~(e) 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~~
- (c) Applicability
- (1) [Formerly 8-630(a)] Persons undertaking development or redevelopment of land shall provide stormwater treatment as provided in this article.
- (2) [Formerly 8-630(b)] Owners of stormwater treatment facilities shall register their facilities with the ~~director~~ **County Engineer**, shall regularly inspect and maintain their facilities, and shall report inspection results and maintenance activities all as provided in this article.

- (3) [Formerly 8-630(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.
- (4) [Formerly Section 8-630(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~~
- (5) [Formerly Section 8-630(d)]**Standard Exceptions for stormwater treatment facilities designed to treat pollutants and not volume or peak discharges.**
- (a) [Formerly Section 8-630(d)(1)] 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 UG 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 Ordinance once the cumulative land disturbance for a particular tract has exceeded the one acre threshold.**
 - (b) [Formerly Section 8-630(d)(2)] 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~~
 - (c) [Formerly Section 8-630(d)(3)] 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 5000 square feet. The UG does however reserve the right to require the treatment of the cumulative area of impervious surface increase (for those incremental increases of less than 5000 sf each) that has occurred since adoption of this Ordinance once the cumulative increase in impervious surface for a particular tract has exceeded the 5000 sf increase in impervious surface threshold.**
 - (e) **Land Disturbances for linear utility construction.**
 - (f) **Agricultural land uses.**
 - (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 Management 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 Ordinance are exempt from the provisions of this Chapter, but said development is still subject to the previous version of this Ordinance. “Substantial or Significant Changes” to Development plans after January 1, 2021, must comply with this Ordinance in the same manner as a new Development.
 - (7) *UG Administered Street Construction:* Street and thoroughfare construction projects administered and constructed by the UG shall comply with this Ordinance, except that compliance is not required for street and thoroughfare construction that:
 - (a) Would be exempt under the standard exceptions in section a. above
 - (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 UG administered projects are owned and maintained by the UG.
 - (9) *State Rights-of-Way:* The Unified Government does not assert jurisdiction under this Ordinance over any construction work on State of Kansas rights-of-way.
 - (10) [Formerly 8-630(f)] In the process of adopting supplemental regulations authorized by this article the County administrator-Engineer may provide other exceptions to this article.
- (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;~~
 - (2) ~~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~~
 - (3) ~~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 a final plat prior to September 1, 2010 and has completed all proposed improvements within two years of the date of approval.~~
- (d) Compatibility, Severability and Authority

- (1) This ordinance 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 ordinance should be considered minimum requirements, and where any provision of this ordinance 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 ordinance 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 ordinance.
- (3) [Formerly Section 8-633(a)] ~~The director of water pollution control~~ **County Engineer** is the principal UG 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 director~~ **County Engineer** may delegate any or all of his or her duties under this article.
- ~~(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.~~

(Ord. No. O-25-10, § 1, 5-6-2010)

Section 8-631. ~~Purpose of Article~~ **Definitions** [Formerly Section 8-632]

- ~~(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 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 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.~~

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.

County administrator. The individual appointed by the mayor/CEO of the unified government as the unified government county administrator or his/her designee.

County engineer. 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. 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. 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. 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.

~~*Director.* The individual appointed by the county administrator as director of water pollution control or his/her designee.~~

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 management practices.

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. 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 Register of Deeds.

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

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.

Stormwater treatment facility (STF). 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. 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, specifications, standard details, and maintenance requirements adopted in writing by the County Engineer.

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-25-10, § 1, 5-6-2010)

Section 8-632. Definitions **Performance Criteria**

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

~~*County administrator.* The individual appointed by the mayor/CEO of the unified government as the unified government county administrator or his/her designee.~~

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

~~*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.~~

~~*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.~~

~~*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 ownership on which development or redevelopment of land occurs after the effective date of this article.~~

~~*Director.* The individual appointed by the county administrator as director of water pollution control or his/her designee.~~

~~*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.~~

~~*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.~~

~~*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.~~

~~*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.~~

~~*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.~~

- (a) *Stormwater Treatment Standards (Standards):* The County Engineer shall adopt and maintain Stormwater Treatment Standards to implement and interpret the provisions of this Ordinance. 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.
 - (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 and water volume control that satisfies the level of service and value rating calculations set forth in the Stormwater Treatment Standards and other requirements established by 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 obtain credit for using non-structural practices must ensure that these practices are documented and will remain unaltered by subsequent property owners by locating the facility in a 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 treatment facilities that would be expected to provide similar or better performance.
 - (2) Evaluations of credits, ratings, or level of service calculations to account for unique or special technical considerations.
 - (3) Corrections, clarifications or modifications to requirements which the 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 per section 8-643.

(Ord. No. O-25-10, § 1, 5-6-2010; Ord. No. O-27-14, § 2, 4-10-2014)

Section 8.633. ~~Administration~~ Site Location and Placement

- ~~(a) *Administrative duties.* The director of water pollution control is the principal unified government official responsible for administration of this article and its requirements. The director may delegate any or all of his or her duties under this article.~~
- (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 but at a minimum on final construction plans and in the maintenance plan.
 - (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 Engineering 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, therefore credit will be granted by the Stormwater Treatment Standards as referenced in the Public Works and Engineering Standards. In limited circumstances, the outer one-third (1/3) of the designated stream corridor may incorporate additional features which enhance the corridor's Stormwater treatment function. Such Facilities must be consistent with the long-term integrity of the stream corridor as a natural, riparian zone. Any non-structural BMP used for water quality credit shall be included and protected in a drainage easement.

~~(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.

(Ord. No. O-25-10, § 1, 5-6-2010)

Section 8.634. Stormwater treatment facility Plan and Report Requirements ~~design and construction.~~

(a) *Developer to prepare Stormwater Treatment Plan.* For multi-lot subdivisions the stormwater treatment plan shall also include maintenance agreements as deemed necessary by the director. 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 schedule plan, agreement and schedule, and a pollution prevention plan. . 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.~~

- (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 UG Design Criteria and this Ordinance. 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 UG Design Criteria.
- (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) [Formerly 8-634(b)] *No separate permit:* The **County Engineer** ~~director~~ shall review and approve the stormwater treatment plan. Review, approval, construction inspection, **and maintenance agreement 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.
- (5) [Formerly 8-634(c)] *Developer to construct:* The developer shall construct the stormwater treatment facilities according to the approved plan and the adopted construction standards.
- (6) [Formerly 8-634(d)] *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 green infrastructure stormwater management facilities are proposed to be located to prevent soil compaction.

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

- (c) *Design Certification:* Prior to commencing construction of a Stormwater Treatment Facility on projects that do not require a 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.
- (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.~~

(Ord. No. O-25-10, § 1, 5-6-2010; Ord. No. O-27-14, § 2, 4-10-2014)

Section 8-635. ~~Procedures 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.~~
- (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:
 - (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% 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 (6) months of permanent stabilization of the entire land area served by the Facility. Land area served by the Facility shall mean those areas served*

by the Facility within the common plan of Development and shall not include 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 been fully approved for construction to serve the building or site.

~~(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 stormwater 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.~~

(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.
- (3) Issue Stop Work Orders for permitted work for any or all property that is proposed to be served by such Stormwater Treatment Facility.

~~(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.~~

(Ord. No. O-25-10, § 1, 5-6-2010)

Section 8-636. Construction Inspections ~~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.~~

(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) — *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.~~
- (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-25-10, § 1, 5-6-2010)

Section 8-637. **Post-Construction Certification, As-Built Plans, and Registry 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.~~
- (a) The following is 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) [Formerly 8-635(a)] *Stormwater treatment facility registry*: The ~~director~~ **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 ~~director~~ **County Engineer** deems necessary. The owner of each stormwater treatment facility required under this article shall register that facility with the ~~director~~ **County Engineer** and shall update the ~~director~~ **County Engineer** of changes in contact information and transfers of any facility to another owner **or persons responsible for maintaining the stormwater treatment facility**. ~~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) *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. A notice of violation may, after notice and an opportunity to be heard, include an order of the director for compliance with legal requirements of this article or regulations, orders, permits or other legal requirements hereunder. The 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 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.~~
 - ~~(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.~~

(Ord. No. O-25-10, § 1, 5-6-2010; Ord. No. O-27-14, § 2, 4-10-2014)

Section 8-638. **Protection, Maintenance and Repair of Facilities** 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 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.~~
- (a) [Formerly 8-636(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) The person shall be afforded a hearing on the matter before the county administrator within 30 days of filing the appeal. A written decision will be issued within 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 30 calendar days of the hearing.~~
- (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) 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.~~
- (c) *Required Maintenance Agreement:* Prior to issuance of any permit that includes construction of a Stormwater Treatment Facility, the applicant or 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.
 - (5) Establish the frequency of inspections.
 - (6) Identify the UG'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.
- (8) The Maintenance Agreement shall be recorded in the Register of Deeds and associated with all lots with Stormwater Treatment Facility maintenance responsibilities.
- ~~(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.~~
- (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 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) — Any such person shall have 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.~~
- (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 annually per Section 8-639. 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 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.
- (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 Ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this Ordinance.
- (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 (5) 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 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 thirty (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 owner(s) of the Facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the Unified Government.

(Ord. No. O-25-10, § 1, 5-6-2010)

Section 8-639. ~~Annual Certifications~~ Penalties

~~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 \$250.00 and not more than \$1,000.00. Each day a violation occurs shall constitute a separate offense.~~

- (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 furnish certification by a Professional Engineer, Landscape Architect, Certified Stormwater Manager or other individual approved in writing by the County Engineer. The certification shall be in compliance with the Unified Government Design Manual and Report and requires that the scope and timing of the prescribed maintenance is being completed in accordance with the Report. The certification shall also provide records of maintenance performed in the last calendar year as listed in Section 8-638.
- (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-25-10, § 1, 5-6-2010)

Section 8-640. Violations ~~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.~~

- (a) *Violations:* Any development activity that is commenced or is conducted contrary to this Ordinance, may be restrained by injunction or otherwise abated in a manner provided by law.
- (b) *Severability.* If any section, subsection, sentence, clause, phrase, or portion of this article 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.
- (b) *Notice of Violation:* When the County Engineer finds that a User has violated, or continues to violate, any provision of this ordinance, or order issued hereunder, the County Engineer may serve upon that User a written Notice of Violation. Within 45 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 User to the County Engineer. Submission of such a plan in no way relieves the User 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.
- (c) *Unified government failure to enforce.* The unified government's failure to enforce or remedy any noncompliance of the terms and conditions of this article shall not constitute a waiver of the united government's rights nor a waiver of any person's obligation as provided in this article.

- (d) ~~*Reservations of rights.* In addition to any rights specifically reserved to the unified government by this article, 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 article.~~
- (e) ~~*Savings clause.* Neither the adoption of this article, 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 article, 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 article shall take effect and be in full force after its passage, approval, and publication in the official unified government newspaper.~~

(Ord. No. O-25-10, § 1, 5-6-2010)

Section 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 Ordinance, 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 treatment BMPs.
 - (e) Compliance with articles in this chapter
 - (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 15 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) [Formerly 8-637(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 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 ~~director~~ **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) [Formerly 8-637(a)] *Withhold development authorization.* Whenever the ~~director~~ **County Engineer** determines the stormwater treatment plan does not meet the design standard the ~~director~~ **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;
 - (3) Withhold the issuance of or place a stop work order on a building permit for which the stormwater treatment plan is required.
- (c) [Formerly 8-637(b)] *Withhold occupancy permits:* Whenever the ~~director~~ **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 ~~director~~ **County Engineer** may, without prior notice of violation, withhold the issuance of a temporary or final certificate of occupancy.
- (d) [Formerly 8-637(c)] *Stop work:* Whenever the ~~director~~ **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 ~~director~~ **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) [Formerly 8-637(e)] *Prosecution of violation stormwater treatment facility owners:* Whenever the ~~director~~ **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 ~~director~~ **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.

- (f) [Formerly 8-637(f)] *Abatement and cost recovery*: Whenever the ~~director~~ **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 ~~director~~ **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 ~~director~~ **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) [Formerly 8-637(g)] *Prosecution of violation impairing and interfering*. Whenever the ~~director~~ **County Engineer** determines a person is in violation of this article the ~~director~~ **County Engineer** may, without prior notice, instigate appropriate proceedings at law to assess fines pursuant to section 8-639~~42~~ penalties.
- (h) [Formerly 8-637(h)] *No order of precedence implied*. Except where the forgoing enforcement activities require the prior issuance of a notice of violation, the ~~director~~ **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-57-13, § 2, 12-5-2013)

Section 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 user has failed to comply with any provisions of this chapter or regulations, orders, permits or other legal requirements hereunder, the user 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 User has violated, or continues to violate, any provision of this ordinance, The County Engineer may penalize such User in an amount not to exceed \$1,000.00. Such penalties shall be assessed on a per-violation, per day basis.

- (2) Users 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 forty-five (45) days of being notified of the penalty. Where a request has merit, the County Engineer may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. 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 User.
- (e) The County Engineer may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User 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 ordinance.

Section 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 user 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.

(Code 1988, § 30-5; Ord. No. O-46-05, § 1, 6-2-2005; Ord. No. O-27-1



Staff Request for Commission Action

Tracking No. 21773

Full Commission Meeting Date: NA

Committee: Public Works & Safety

Date of Standing Committee Action:
(If none, please explain):

Publication Required: No

<u>Date:</u>	<u>Contact Name:</u>	<u>Contact Phone:</u>	<u>Contact Email:</u>	<u>Department:</u>
4/13/2021	Jeff Fisher, Jeff Fisher	x5415, x5415	jfisher@wycokck.org, jfisher@wycokck.org	Public Works

Item Description:

Public Works Staff will give an update on the Unified Government's Stormwater Design criteria to APWA 5600 to be consistent with the criteria most of the metro area. The revised criteria will complement the proposed ordinance updates to Chapter 8 and Chapter 30. The updates are initial comprehensive standard updates.

Division V Design Criteria Link: [DIVISION II \(apwa.net\)](#)

Action Requested:

No action, information only.

Budget Impact: (if applicable)

Amount:

Source:

Included In Budget:

Other (explain):

Attachments List: