

ORDINANCE NO. SWT-2807

AN ORDINANCE RELATING TO STORMWATER TREATMENT IN THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 16.210.020, 16.210.040, 16.210.050 AND 16.210.100.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. Section 16.210.020 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.020 Definitions.

For the purposes of this Chapter, these words and phrases shall have the following meaning:

- A. "Applicant" means a property owner or agent of a property owner who has filed an application for a permit that is subject to the requirements of this Ordinance.
- B. "Channel" means a natural or artificial watercourse with defined bed and banks that conducts continuously or periodically flowing water.
- C. "City" means the City of Overland Park, Kansas.
- D. "Code" means the Overland Park Municipal Code.
- E. "Dedication" means the deliberate appropriation of property by its owner for general public use.
- F. "Developer" means a person who engages in development of real estate, whether or not that person is the landowner.
- G. "Development" means any man-made changes to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
- H. "Director" means the Director of the Planning and Development Services Department or the Director's authorized representative.
- I. "Director of Public Works" means the Director of the Public Works Department or the Director's authorized representative.
- J. "Impervious Cover" means those surfaces that cannot effectively infiltrate rainfall, including building rooftops, pavement, sidewalks, and driveways.
- K. "Infiltration" means the process of percolating stormwater into the subsoil.
- L. "Infill Development" means development on a vacant or substantially vacant tract of land surrounded by existing development except that tracts of land larger than ten (10) acres shall not be considered "Infill Development."
- M. "Land Disturbance" means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

- N. "Landowner" means the legal or beneficial owner or owners of a lot or tract. The holder of a contract to purchase or other person having an enforceable proprietary interest in a lot or tract shall be deemed a landowner.
- O. "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.
- P. "Off-Site Facility" means a stormwater treatment facility located outside the subject property boundary described in the permit application for land development activity, including facilities that may accept runoff from multiple projects.
- Q. "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.
- R. "Redevelopment" means development on a tract of land ~~with existing structures where all or most of the existing structures would be razed and a new structure or structures built~~that has been previously developed in substantial accordance with an approved development plan or final plat, either under City or County zoning codes, and where all or most of the existing structures and/or site improvements built under that plan are proposed to be razed and a new structure or structures or other site improvements are proposed to be constructed in accordance with an approved development plan or plat.
- S. "Stop Work Order" means an order issued which requires that all construction activity on a site be stopped.
- T. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage from precipitation.
- U. "Stormwater Treatment Facilities" or "Facilities" means all structures, plantings, natural features, or other physical elements that are designed, constructed and maintained in accordance with this Ordinance and which are provided to prevent or reduce stormwater pollution or to control stormwater runoff volume and discharges.
- V. "Stormwater Treatment Standards" or "Standards" means the detailed design criteria, specifications, standard details, and maintenance requirements adopted in writing by the Director.
- W. "Watercourse" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

SECTION 2. Section 16.210.040 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.040 Performance Criteria.

- A. Stormwater Treatment Standards (Standards): The Director shall adopt and maintain Stormwater Treatment Standards to implement and interpret the provisions of this Ordinance. The latest edition of the *Mid-America Regional Council and American Public Works Association Manual of Best Management Practices for Stormwater Quality (MARC BMP Manual)*, and all appendices, shall be the basis of these Standards. Included in the Standards shall be additional technical guidance or exceptions to the *MARC BMP Manual* which have been adopted by the Director. The additional guidance or exceptions 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 Planning and Development Services Department. The Standards adopted by the Director shall be effective upon approval of the Governing Body after having received recommendations of the Public Works and Community Development Committees.

- B. Modifications to Standards: The Standards shall be adopted and amended by the Director following a public input process. The public input process shall include the following minimum steps: 1) posting proposed documents in draft form a minimum of 30 days prior to the Director holding a public informational meeting; and 2) extending a written comment period for a minimum of 30 days after the public informational meeting. A new public input process is not required for revisions to the proposed draft documents if the Standards are adopted by the Director within 180 days of the public informational meeting.
- C. Minimum Control Requirements: All stormwater treatment facilities shall be designed to provide a combination of pollutant removal and water volume control that satisfies the level of service and value rating calculations set forth in the Stormwater Treatment Standards and other requirements established by City approved watershed management plans or studies.
- D. Non-Structural Stormwater Practices: Non-structural stormwater treatment practices are encouraged to minimize the reliance on structural practices. Applicants wishing to obtain credit for using non-structural practices must ensure that these practices are documented and will remain unaltered by subsequent property owners by locating the facility in a conservation easement, separate tract dedicated for stormwater treatment facilities or similar instrument as approved by the Director.
- E. Infill and Redevelopment Projects ~~north of Interstate I-435~~: The Standards may modify or reduce requirements on infill and redevelopment projects ~~in areas north of Interstate I-435~~.
- F. Modifications to Allow Alternate Compliance: In addition, the Director may waive or modify any of the Stormwater Treatment Standards to encourage the implementation of alternative or innovative practices that implement the intent of the modified standards and provide equivalent public benefits without significant adverse impacts on surrounding developments. Such modifications may be granted for issues including, but not limited to:
 - 1. Approval of alternate materials, devices, techniques, details or specifications for individual 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 Director has found to give inadequate or undesirable performance.

- G. Appeals of decisions made by the Director related to the Standards shall be made to the Governing Body.

SECTION 3. Section 16.210.050 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.050 Site Location and Placement.

The location of stormwater treatment facilities shall be consistent with their function while also conforming to the uses and constraints of the site. The facilities' locations shall be approved by the Director, and ownership and maintenance responsibility established. At a minimum, all stormwater treatment facilities will be shown on final construction plans and in the maintenance plan.

- A. Centralized and Common Stormwater Treatment Facilities: ~~Most e~~Centralized and common facilities for stormwater management ~~will~~shall be shown on preliminary ~~plats, preliminary plans, final plans~~ and final ~~plat~~plans. The perimeter of the facility shall be ~~documented by a legal boundary description as required by the Director, which could include, but not limited to, a separate tract, a conservation easement, or a dedication on the final plat~~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 easements and rights of access, as set forth in Section 16.210.100.
- B. Distributed Stormwater Treatment Facilities: ~~The City may determine that some d~~Distributed stormwater treatment facilities ~~cannot~~shall be ~~described practically by separate legal boundaries on plans or plats~~dimensioned on a plan provided as an attachment to the Maintenance Agreement. ~~In such circumstances, p~~Provisions ~~will~~shall be made for maintenance of the facilities, documentation of their presence, and easements and rights of access, as set forth in Section 16.210.100.
- C. Residential Single-Family and Two-Family Areas: Generally, stormwater treatment facilities for residential single-family and two-family developments shall be centralized and located on a common tract, to be owned and maintained by a homes association.

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

- D. Private Facilities in the Public Street Right-of-Way: Privately owned and operated stormwater treatment facilities shall be located outside of the public street right-of-way unless approved in writing by the Director of Public Works and a corresponding right-of-way maintenance agreement shall be recorded that provides for private maintenance responsibility in the public street right-of-way.

- E. Coordination with Utility Easements: Stormwater treatment facilities shall not be co-located within utility easements unless approved by the Director.
- F. Detention Ponds: When detention facilities for peak flood control are required under the provisions of Chapter 15.10 of the Code, such basins may be co-located with stormwater treatment facilities, provided that the facilities are designed to meet the requirements of both uses.
- G. Off-site Facilities: The Director may consider proposals to manage stormwater runoff in off-site facilities that treat runoff from the proposed development and comply with the Stormwater Treatment Standards. The off-site facility shall be in place prior to or concurrently with the proposed development. Long-term operations and maintenance responsibilities for the facilities must be established by legal agreements, approved by the City and recorded with Johnson County Records and Tax Administration.
- H. Existing stream corridors as required in Chapter 18.365 of the Municipal Code are considered a beneficial Stormwater Treatment Facility, therefore credit will be granted by the Stormwater Treatment Standards. In limited circumstances, which are specifically included in the Stormwater Treatment Standards, the outer one-third (1/3) of the designated stream corridor may incorporate additional features which enhance the corridor's stormwater treatment function. Such facilities must be consistent with the long-term integrity of the stream corridor as a natural, riparian zone.

SECTION 4. Section 16.210.100 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.100 Maintenance and Repair of Facilities.

- A. Required Maintenance Agreement: Prior to issuance of any permit that includes construction of a stormwater treatment facility, the applicant or owner of the site shall provide a Maintenance Agreement for approval by the Director. At a minimum, the Maintenance Agreement shall:
 1. Identify the responsible party for maintaining all stormwater treatment facilities.
 2. Include an attachment showing the locations and dimensions of all stormwater treatment facilities.
 3. Provide access easements reserved for the responsible party to access and maintain all stormwater treatment facilities, as well as right of access to the City as provided in other sections of this Chapter.
 4. Establish minimum frequency and levels of maintenance to be done.
 5. Identify and itemize anticipated annual maintenance expenditures, periodic major maintenance items, facility replacement costs, and expected facility lifetime, so that the responsible party may better plan for future maintenance costs.
 6. Establish the frequency of inspections to meet or exceed the requirements of this Chapter.
 7. Identify resources available to provide maintenance.

8. Identify prohibited practices and homes or business association enforcement process for restoration.
 9. Identify the City's rights in the event that the responsible party fails or is unable to perform any of the obligations of the Maintenance Agreement.
 10. Clarify how modifications or additions can be made to the Maintenance Agreement.
 11. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain stormwater treatment facilities if the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.
- B. Formation of Homes or Business Association: The owner or developer shall form a homes or business association prior to the sale of any lots, and the homes or business association covenants shall include, or reference, the provisions of the approved Maintenance Agreement. The homes association or business association covenants shall include provisions collecting maintenance costs for stormwater treatment facilities.
- C. Notice on Plat or Title: The final plat and homes or business association deed restrictions shall contain language approved by the Director to provide notice of facility presence and maintenance obligations. Said deed restriction shall be recorded with the Johnson County 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 Director and substantially as set forth below:
- "Notice: This site includes Stormwater Treatment Facilities, as defined and regulated in the Overland Park Municipal Code. Restrictions on the use or alteration of the said facilities may apply. This property is also subject to the obligations and requirements of the Stormwater Treatment Facility Maintenance Agreement approved by the City."
- When the proposal involves a final plat, this notice shall appear on the face of the plat, as recorded. When the proposals do not involve a final plat, the notice shall be in the form of a notice of presence recorded with the Johnson County Records and Tax Administration, and the notice shall include the legal description of the property, the current owner, the application date and other reference to the project, and the notarized signature of the property owner or owners.
- D. 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 an inspection report to the City, at the minimum of one (1) year following initial certification, and subsequently every two (2) years thereafter, or as required by the Director. The inspection report shall be completed and sealed by a registered professional engineer in the State of Kansas, unless the Director approves other qualified professionals to perform these duties. Such inspection shall document each item including, but not limited to, the needs for removal of silt, litter and other debris,

grass cutting, removal of undesirable vegetation, and replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the Director, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the stormwater treatment facility.

- E. **City Inspection of Stormwater Treatment Facilities:** The City 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.
- F. **Right of Entry for Inspection:** When any stormwater treatment facility is installed on private property, or when any new connection is made between private property and a public storm sewer system, the property owner shall grant to the City in a manner and form acceptable to the Director, 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.
- G. **Records of Installation and Maintenance Activities:** Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five years. These records shall be made available to the Director during inspection of the facility and at other reasonable times upon request.
- H. **Failure to Maintain Practices:** If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the Director, after reasonable notice, may correct a violation of the Standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the Director shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have 30 days to effect maintenance and repair of the facility in an approved manner. In the event of an emergency, when the Director 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 Director will enforce the maintenance provisions of this Chapter with any or all of the following enforcement measures:

1. Notice of Violation: The Director 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 Director 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 county.

SECTION 5. Existing Overland Park Municipal Code Sections 16.210.020, 16.210.040, 16.210.050 and 16.210.100 are hereby repealed.

SECTION 6. This ordinance shall take effect and be in force from and after June 1, 2009 and its publication in an official City newspaper.

PASSED by the City Council this ___ day of _____, 2009.

APPROVED by the Mayor this ___ day of _____, 2009.

Carl Gerlach, Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

J. Bart Budetti
Senior Assistant City Attorney