

ORDINANCE NO. SWT-2900

AN ORDINANCE RELATING TO STORMWATER TREATMENT IN THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 16.210.020, 16.210.030, 16.210.050, 16.210.060, 16.210.080, 16.210.090 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 ~~w~~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 ~~d~~Development of real estate, whether or not that person is the ~~H~~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 ~~s~~Stormwater into the subsoil.
- L. "Infill Development" means ~~d~~Development on a vacant or substantially vacant tract of land surrounded by existing ~~d~~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-~~S~~ite Facility" means a ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility located outside the subject property boundary described in the permit application for land ~~d~~Development activity, including ~~f~~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. "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.
- RR. "Redevelopment" means ~~d~~Development on a tract of land that has been previously developed in substantial accordance with an approved ~~d~~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 ~~d~~Development plan or plat.
- TS. "Stop Work Order" means an order issued which requires that all construction activity on a site be stopped.
- UF. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage from precipitation.
- VU. "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 ~~s~~Stormwater ~~p~~ollution or to control ~~s~~Stormwater runoff volume and discharges.
- WV. "Stormwater Treatment Standards" or "Standards" means the detailed design criteria, specifications, standard details, and maintenance requirements adopted in writing by the Director.
- XW. "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 16.210.030 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.030 Applicability.

No land shall be developed without full compliance with this Chapter unless ~~d~~Development occurs as allowed by the following exceptions:

- A. Standard Exceptions: Projects meeting any of the following criteria are exempt from the provisions of this Chapter:
 - 1. Land ~~d~~isturbances of less than one acre that are not part of a common plan for ~~d~~Development that will cumulatively disturb more than one acre.

2. Expansions and modifications to ~~p~~Previously ~~e~~Constructed ~~d~~Developments otherwise subject to this Chapter where the proposed increase in impervious surface is less than 5,000 square feet. This exception shall not apply to multiple applications in the approval process and/or under construction at the same time that cumulatively exceed 5,000 square feet of impervious surface.
3. Land ~~d~~Disturbances for utility construction.
4. Agricultural land uses.
5. Single lot residential ~~d~~Developments that are not part of a larger common plan for ~~d~~Development.
6. Repairs to any ~~s~~Stormwater management ~~f~~Facility or practice deemed necessary by the Director of Public Works.
7. Required Rezoning and Special Use Permits to allow a specific use with no physical changes proposed to the approved Preliminary Development Plan.

B. City Administered Street Construction: Street and thoroughfare construction projects administered and constructed directly by the City shall comply with this Ordinance, except that compliance is not required for street and thoroughfare construction: (1) that would be exempt under the standard exceptions in Section 16.210.030-A of this Chapter; and (2) that will maintain, enhance, or reconstruct existing roadways, including the intersection improvements, turn lane additions, safety improvements, or new entrances, but which will not add additional through lanes.

~~In addition, street and thoroughfare projects shall be exempt from this Ordinance if the Director of Public Works has approved the preliminary engineering study (PES) prior to October 1, 2008, and provided that construction of the project is scheduled to begin prior to December 31, 2009.~~

Unless subject to another agreement, ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities installed as part of City administered projects are owned and maintained by the City.

The City does not assert jurisdiction under this Ordinance over any construction work on State of Kansas right-of-way.

C. Previously Approved Development Plans: Projects having a preliminary ~~d~~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, ~~except as follows: Development plans approved prior to March 1, 2008, the effective date of this Ordinance, may make "substantial or significant changes" as defined in Section 18.140.200 of the Municipal Code until June 1, 2009, without invoking this Ordinance. "Substantial changes or Significant Changes" to~~ ~~d~~Development plans after June 1, 2009, must comply with this Ordinance in the same manner as a new ~~d~~Development.

"Substantial or Significant Changes" shall mean any of the following criteria:

1. Increases in the density or intensity of residential uses of more than five percent (5%) when the increase creates additional impervious surface (typically horizontal in nature).
2. Increases in the total floor area of all nonresidential buildings covered by the plan of more than ten percent (10%) when the increase creates additional impervious surface (typically horizontal in nature).
3. Increase in lot coverage of more than five percent (5%).
4. Changes in ownership patterns or stages of construction that will lead to a different Development concept.
5. Decreases of areas devoted to open space of more than five percent (5%) or the substantial relocation of such areas.
6. Decreases of any peripheral setback of more than five percent (5%).
7. Changes of traffic circulation patterns that will affect traffic outside of the project boundaries.
8. Modification or removal of conditions or stipulations to the preliminary Development plan approval.
9. For any Developments proposed in the RP-OE, RP-OS, or PRN zoning districts, any change in the specified use or maintenance of any designated open space lands.
10. For any Developments proposed in the PRN, any changes in the type of dwelling units or style of dwelling units proposed to be constructed in a particular area or block.

~~D. For development plan applications submitted prior to March 1, 2008, the effective date of this Ordinance, the application shall obtain final approval prior to October 1, 2008, or it must comply with this Ordinance.~~

~~E. For development plan applications where the subject property meets the following conditions:~~

- ~~1. The property was annexed by Ordinance No. A-2719; and~~
- ~~2. The Director has determined that the owners of said property, prior to January 1, 2008, sought to annex the property into the City of Overland Park by consent annexation pursuant to K.S.A. 12-520(a)(7), and that the owners, subsequent to annexation of said property into the City, intended to seek to apply for exemption pursuant to the exception then contained in O.P.M.C. Section 16.210.030 (C) and now contained in O.P. M. C. Section 16.210.030(D); and~~
- ~~3. The Consent to Annexation was not accepted by the City during the pendency before the Johnson County Board of County Commissioners (“BOCC”) of the City’s annexation petition presented to the BOCC on August 23, 2007; and~~
- ~~4. The owners submit to the City a preliminary plat application prior to June 1, 2008, and obtain final approval by July 1, 2010, or it must comply with this Ordinance. Substantial changes to a preliminary development plan, including but not limited~~

~~to a preliminary plat after July 1, 2010, must comply with this Ordinance in the same manner as a new development.~~

DF. ~~Infill and Redevelopment Projects: Infill and redevelopment plans on sites north of Interstate I 435 that disturb less than 10 acres and that obtain final approval prior to June 1, 2009, are exempt from provisions of this Chapter. Subsequent substantial changes to such approved plans are subject to the provisions of this Chapter as required under Section 16.210.030.C.1 of this Chapter. Substantial or Significant Changes to approved Development plans after June 1, 2009, are subject to the provisions as required under Section 16.210.030 C of this Chapter.~~

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 ~~s~~Sstormwater ~~t~~Treatment ~~f~~Facilities shall be consistent with their function while also conforming to the uses and constraints of the site. The ~~f~~Facility locations shall be approved by the Director, and ownership and maintenance responsibility established. At a minimum, all ~~s~~Sstormwater ~~t~~Treatment ~~f~~Facilities will be shown on final construction plans and in the maintenance plan.

- A. Centralized and Common Stormwater Treatment Facilities: Centralized and common ~~f~~Facilities for ~~s~~Sstormwater management shall be shown on preliminary and final plans. The perimeter of the ~~f~~Facility shall be dimensioned on a plan provided as an attachment to the Maintenance Agreement. Provisions shall be made for maintenance of the ~~f~~Facilities, documentation of their presence, and ~~easements and~~ rights of access, as set forth in Section 16.210.100.
- B. Distributed Stormwater Treatment Facilities: Distributed ~~s~~Sstormwater ~~t~~Treatment ~~f~~Facilities shall be dimensioned on a plan provided as an attachment to the Maintenance Agreement. Provisions shall be made for maintenance of the ~~f~~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, ~~s~~Sstormwater ~~t~~Treatment ~~f~~Facilities for residential single-family and two-family ~~d~~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 ~~f~~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 ~~f~~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 ~~s~~Sstormwater ~~t~~Treatment ~~f~~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 ~~m~~Maintenance ~~a~~Agreement shall be recorded that provides for private maintenance responsibility in the public street right-of-way.

- E. Coordination with Utility Easements: Stormwater ~~t~~Treatment ~~f~~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 ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities, provided that the ~~f~~Facilities are designed to meet the requirements of both uses.
- G. Off-site Facilities: The Director may consider proposals to manage ~~s~~Stormwater runoff in ~~o~~Off-site ~~f~~Facilities that treat runoff from the proposed ~~d~~Development and comply with the Stormwater Treatment Standards. The ~~o~~Off-site ~~f~~Facility shall be in place prior to or concurrently with the proposed ~~d~~Development. Long-term operations and maintenance responsibilities for the ~~f~~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 ~~s~~Stormwater treatment function. Such ~~f~~Facilities must be consistent with the long-term integrity of the stream corridor as a natural riparian zone.

SECTION 4. Section 16.210.060 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.060 Deviation.

- A. The Planning Commission or Governing Body may, in the process of approving preliminary plats, final plats, preliminary ~~d~~Development plans, ~~or~~ final ~~d~~Development plans, special use permits, or rezonings, approve deviations from the specific terms of this Ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship for the ~~a~~Applicant, and provided that the spirit of this Ordinance shall be observed, the public safety and welfare secured and substantial justice done for the ~~a~~Applicants.
- B. An application for a deviation may only be granted upon a finding that all of the following conditions have been met:
 - 1. That the granting of the deviation will not adversely affect the rights of adjacent ~~l~~andowners.

2. That the strict application of the provisions of this Ordinance would constitute unnecessary hardship upon the ~~H~~andowner represented in the application.
3. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
4. That granting the deviation will comply with the general spirit and intent of this Ordinance.
5. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or state laws.

Upon consideration of the factors listed above and the purposes of this Ordinance, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter.

C. In considering deviation applications, the City has the discretion of using any or all of the following project evaluations when, in the judgment of the Planning Commission or Governing Body, these evaluations are relevant and appropriate. No individual or combination of evaluations are necessarily required for an application to be approved and the Planning Commission or Governing Body may weigh these evaluations in light of all relevant considerations in determining whether or not to approve an application.

1. That alternative standards for ~~s~~Stormwater management, water quality protection, and ecological preservation have been established, and/or that mitigation measures are undertaken.
2. That existing physical or natural characteristics of the site make strict application of the Ordinance infeasible.
3. That concerns for flooding, stream bank erosion, stream instability, and maintenance of culverts, bridges or other structures are addressed.
4. That the deviation is the minimum necessary to afford relief.

D. For City administered street construction, a request for deviation will be initiated and recommended by the Director of Public Works and must be approved by the Governing Body. The City may consider, as part of a deviation request, the constraints posed by lack of available right-of-way, interaction with previously planned or approved ~~s~~Stormwater drainage systems, and the nature of surrounding land uses.

SECTION 5. Section 16.210.080 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.080 Permit Procedures, Requirements, and Performance Surety.

A. Permit Required: No person shall receive any permits for building, grading or other land ~~d~~Development without meeting the requirements of this Ordinance. Generally, permits for ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility construction will be completed under the authorization of a building, site ~~d~~Development, or land disturbance permit. Application requirements and procedures are described in Title 18 of the Code.

- B. Construction Plan Requirements: The Director shall have the authority to set minimum construction plan submittal requirements by written policy or checklist.
- C. Performance Surety Required: The Director shall require the submittal of a performance surety in the form of an irrevocable letter of credit or cash deposit. If a letter of credit is provided, it shall be on the form as prescribed by the Director. The amount of the performance surety shall be 1.25 times the total construction cost of the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility as estimated by the project designer and approved by the Director.
- Performance Surety Waiver for Single Lot Developments: If ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities only serve a single building lot and a building is being constructed, a performance surety may be waived by the Director provided all ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities are constructed and certified prior to issuance of a Certificate of Occupancy. When seasonal or environmental conditions cause a delay in constructing the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities, the Director may approve issuing a Certificate of Occupancy provided a performance surety is posted in accordance with ~~16.210.080~~ ~~(C)~~this Section.
- D. Release of Performance Surety: The performance surety will be released only when all of the following conditions have been met:
1. At least 90% of the land area served by the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities has permanent stabilization in place.
 2. All of the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities covered by the surety have been constructed and certified in accordance with this Chapter.
 3. If the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility is constructed prior to final stabilization of at least 90% of the land area served by the facility, and the most recent certification of the facility is more than 90 days old, an updated certification shall be required to verify that the facility is fully functional.
- E. Maintenance Surety: Prior to issuance of a ~~permit for construction~~final certificate of occupancy of a stormwater treatment facility, the contractor shall submit cash, a letter of credit, or a maintenance bond. The contractor shall be responsible for all regular maintenance and repairs to the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility while the maintenance surety is in effect including, but not limited to, repairs necessary due to damage caused by intentional or unintentional acts of others. The maintenance surety shall be in the amount of 50% of the construction cost of the facility and can be utilized for any maintenance or rehabilitation costs associated with the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility deemed necessary by the City, including, but not limited to, removal of siltation, mowing, replacement of vegetation, piping repairs, replacement of underdrains, other repairs to the facility, and any administrative or engineering costs associated with such maintenance and repairs. Maintenance sureties shall conform to the following:

1. If the maintenance surety is in the form of a maintenance bond, it shall remain in effect for a period of ~~three-two~~ (23) years following initial certification of the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility.
2. If the maintenance surety is in the form of a letter of credit, the contractor or ~~d~~Developer shall deposit with the City's Chief Financial Officer an irrevocable letter of credit from an acceptable financial institution payable to the City, collectable no later than ~~three-two~~ (2) years from the date of initial certification of the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility.
3. If the maintenance surety is in the form of cash, or letter of credit, all remaining money and any interest accrued thereon shall be returned to the contractor no later than ~~four-three~~ (34) years after the date of initial certification of the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility.

F. Timing of Stormwater Treatment Facility Construction: Stormwater ~~t~~Treatment ~~f~~Facilities shall be constructed as early as feasible during the ~~d~~Development process. However, since some commonly used ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities are sensitive to construction generated silt when upstream areas are under construction, the following provisions are allowable for timing of such ~~f~~Facility construction:

1. For a ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility serving a single building lot, the ~~f~~Facility shall be constructed concurrently with the ~~d~~Development of the site and building, subject to exceptions set forward in Section 16.210.080(~~D~~) of this Chapter.
2. When ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities serve multiple ~~d~~Development lots within a common plan of ~~d~~Development, a ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility can be final graded, and permanent vegetation installed only after 90% of the land area served by the ~~f~~Facility has achieved permanent stabilization unless the Director approves a shortened schedule. Additionally, ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities must be installed and certified within six (6) months of permanent stabilization of the entire land area served by the ~~f~~Facility. Land area served by the ~~f~~Facility shall mean those areas served by the ~~f~~Facility within the common plan of ~~d~~Development and shall not include offsite areas even if they are tributary to the ~~f~~Facility.
3. For ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities serving multiple ~~d~~Development lots within a common plan of ~~d~~Development, no Certificate of Occupancy shall be issued for any building or site unless a permit has been issued authorizing construction of a required ~~f~~Facility to serve the building or site.

G. Failure to Construct a Required Stormwater Treatment Facility: When construction of a ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility is delayed beyond the limits as provided in this Section, the Director may utilize any or all of the following enforcement mechanisms:

1. Draw upon performance surety funds as necessary to construct the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility. In the event that the performance surety funds are not adequate to cover all costs associated with construction of said ~~f~~Facility, the Director may assess the property owners for any additional costs in accordance with Section 16.210.100(~~H~~) of this Chapter.

2. Withhold issuance of building permits for properties proposed to be served by such ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility.
3. Withhold issuance of Certificates of Occupancy or Certificates of Compliance for permitted work that is proposed to be served by such ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility.
4. Issue ~~s~~Stop ~~w~~Work ~~e~~Orders for permitted work for any or all property that is proposed to be served by such ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility.

SECTION 6. Section 16.210.090 of the Overland Park Municipal Code is hereby amended to read as follows:

16.210.090 Construction Inspections.

- A. Inspections: Regular inspections of the ~~s~~Stormwater management system construction shall be the responsibility of the project designer or other owner’s representative who has been approved by the Director and inspection results forwarded to the City. For certain types and locations of Stormwater Treatment Facilities, the Director may at his discretion require additional or parallel inspections by City staff. A final inspection by the City is required before the release of any performance sureties can occur.
- ~~B. As-Built Plans: All applicants are required to submit actual "as-built" plans for any constructed stormwater treatment practices. The plan must show the final design specifications for all stormwater treatment facilities and must be certified by the project designer. A final inspection by the City is required before the release of any performance securities can occur. The Director will determine required elements of the as-built plans.~~
- ~~B~~C. Post Construction Certification: Prior to refunding of performance securities, the project designer, or other party approved by the Director, must certify that the ~~s~~Stormwater ~~t~~Treatment ~~f~~Facility is fully functional and has been installed in accordance with the approved plans. For ~~d~~Developments not requiring a performance surety, the certification shall be made prior to issuance of a Final Certificate of Occupancy or Certificate of Compliance.

SECTION 7. 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 ~~s~~Stormwater ~~t~~Treatment ~~f~~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 ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities.

2. Include an attachment showing the locations and dimensions of all ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities.
3. Provide access ~~easements reserved~~ for the responsible party to ~~access and~~ maintain all ~~s~~Stormwater ~~t~~Treatment ~~f~~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 ~~s~~Stormwater ~~t~~Treatment ~~f~~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 ~~e~~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 ~~s~~Stormwater ~~t~~Treatment ~~f~~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 ~~f~~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 ~~s~~Stormwater ~~t~~Treatment ~~f~~Facilities, except for distributed ~~f~~Facilities serving individual residential lots, must submit ~~an inspection~~ a maintenance certification 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-maintenance certification~~ 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-maintenance certification report~~ 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 ~~s~~Stormwater ~~t~~Treatment ~~f~~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 ~~p~~Pollutants, inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or ~~p~~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 ~~s~~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 ~~s~~Stormwater treatment practices.
- F. Right of Entry for Inspection: When any ~~s~~Stormwater ~~t~~Treatment ~~f~~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 ~~s~~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 Director during inspection of the ~~f~~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 ~~f~~Facility in proper working condition. In the event that the ~~s~~Stormwater management ~~f~~Facility becomes a danger to public safety or public health, the Director shall notify the party responsible for maintenance of the ~~s~~Stormwater management ~~f~~Facility in writing. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the ~~f~~Facility in an approved manner. In the event of an emergency, when the Director determines that the ~~f~~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 ~~f~~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 ~~f~~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 8. Existing Overland Park Municipal Code Sections 16.210.020, 16.210.030, 16.210.050, 16.210.060, 16.210.080, 16.210.090 and 16.210.100 are hereby repealed.

SECTION 9. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

PASSED by the City Council this ____ day of _____, 2011.

APPROVED by the Mayor this ____ day of _____, 2011.

Carl Gerlach, Mayor

ATTEST:

APPROVED AS TO FORM:

Marian Cook
City Clerk

Tammy M. Owens
Senior Assistant City Attorney