

# **City of Westwood Hills, Kansas**

## **Erosion and Sediment Control Act**

**Edition 2017**

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Hills, Kansas**

**Chapter 5. Building and Construction**  
**Article 7**  
**EROSION AND SEDIMENT CONTROL ACT**

**5-701. Title.**

The title of the City of Westwood Hills Municipal Code Sections 5-701 through 5-742, inclusive, shall be known as the Erosion and Sediment Control Act (“Act”).

**5-702. Purpose and Findings.**

- A. The purpose of this Act shall be to improve water quality and reduce water pollution by controlling erosion and sedimentation caused by land disturbance activities on sites equal to or greater than 1 acre within the City into the municipal separate storm sewer system (MS4) and/or into surface waters.
- B. The Governing Body of the City hereby finds that pollutants are discharged into surface water through the wash off and transport of sediment and pollutants found on the disturbed land by stormwater during rainfall events.
- C. Further, the Governing Body of the City hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.
- D. Further, the Governing Body of the City hereby finds that this ordinance will promote public awareness of damage to water quality, water bodies and wetlands caused by erosion and sedimentation from land disturbance activities.
- E. Further, the Governing Body of the City hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.
- F. Further, the Governing Body of the City hereby finds that a reasonable establishment of restrictions and regulations on land disturbance activities within the City is necessary to eliminate or minimize such discharges of sediment and pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.

**5-703. Abbreviations.**

The following abbreviations when used in these Regulations shall have the designated meanings:

KDHE	Kansas Department of Health and Environment
MS4	County’s Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
SMP Plan	Stormwater Management Plan
SWP2 Plan	Stormwater Pollution Prevention Plan

**5-704. Definitions.**

For the purposes of this Act, the following definitions shall apply:

- A. "Approved plan" means a set of representational drawings or other documents that have been approved by the City as complying with the provisions of this Act submitted by an applicant (either as an independent submittal or a part of another development application(s) required by the City Code) as a prerequisite to obtaining a building or land disturbance permit and that contain the information and specifications required by the City to minimize erosion and off-site sedimentation from land disturbance activities.
- B. "Applicant" means any person who makes application for an approved plan or for a building permit for an activity involving building or development that results in land disturbance or for a land disturbance permit, as required by this Act.
- C. "As-Built plan" means a record drawing or plan prepared and certified by a licensed Professional Engineer or Land Surveyor that represents the actual dimensions, contours, elevations, etc., of a completed structure, facility, or constructed feature.
- D. "City" means the City of Westwood Hills, Kansas.
- E. "Clearing" means any act by which vegetative cover, structures or surface material are removed, including, but not limited to, surface layer, root mat, or topsoil removal.
- F. "Development Application" means all applications required by the City Code as a prerequisite to initiation of development, including, but not limited to, a building permit application.
- G. "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.
- H. "Erosion and sediment control design criteria" means the erosion and sediment control design criteria adopted in writing, as authorized by Section 5-713.
- I. "Excavating" means any act by which soil is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed and includes the conditions that result from that act.
- J. "Federal Project" means any project on federally owned land that involves land disturbance, or any project that involves land disturbance activity and is administered by a federal agency. Use of federal funds does not necessarily qualify an activity as a federal project.
- K. "Filling" means any act by which soil is deposited, placed, pushed, pulled, or transported and includes the conditions that result from that act.
- L. "Finished grade" means the final grade or elevation of the ground surface conforming to an approved plan.
- M. "Floodplain" means the floodway and floodway fringe as identified by the Federal Insurance Administration and by Johnson County Floodplain Management as indicated on the floodplain mapping adopted by FEMA on August 3, 2009, (current map for the City of Westwood Hills is Flood Map 20091C0010G), or such other designation of the floodplain as is subsequently adopted by the City, and representing the regulated 100-year water surface and corresponding elevations.

- N. “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.
- O. “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.
- P. “Licensed land surveyor” 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 surveying.
- Q. “Maximum extent practicable” means 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, minimize erosion and sedimentation from a site during and after development.
- R. “Permit” means a building permit for activities involving building or development resulting in land disturbance and a land disturbance permit for activities resulting in land disturbance that does not involve building or development.
- S. “Permittee” means any person to whom a building permit is issued with respect to activities involving building or development resulting in land disturbance or, for purposes of this Act only, any person to whom a land disturbance permit is issued.
- T. “Planning Director” means the individual appointed by the City as the Planning Director or a duly authorized representative.
- U. “Professional Engineer” is an engineer duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq., to practice engineering.
- V. “Public Works Director” is the individual appointed by the City as the Public Works Director or a duly authorized representative.
- W. “Responsible personnel” means any foreman, superintendent, or project engineer, designated in the permit or in an approved plan, as the person in charge of on-site land disturbance activities or erosion and sediment control associated with land disturbance activities.
- X. “Sediment” means soils or other materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.
- Y. “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 (1) ownership on which land disturbance activity is proposed.
- Z. “Slope” means the inclined surface of a fill, excavation, or natural terrain expressed as a ratio of horizontal distance to vertical distance over a measured inclined surface.
- AA. “Soil” means the unconsolidated mineral and organic material (i.e., earth, sand, gravel, rock or other similar material) on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

- BB. “State Project” means any project on state owned land that involved land disturbance activity or any project that involves land disturbance activity and is administered by a state agency. Use of state funds does not necessarily qualify an activity as a state project.
- CC. “Stormwater Pollution Prevention Plan (SWP2 Plan)” is a plan required by the Kansas Department of Health and Environment (KDHE) and for which contents are specified in the Kansas Water Pollution Control General Permit and Authorization to Discharge Stormwater Runoff From Construction Activities (General Permit No.: S-MCST-0110-1). The purpose of the plan is to help identify the sources of pollution that affect the quality of storm water discharges from a site and to describe and ensure the implementation of practices to reduce pollutants in storm water discharges.
- DD. “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.
- EE. “Vegetative cover” means any grasses, shrubs, trees, and other vegetation that protects and stabilizes soils.
- FF. “Watercourse or Drainageway” means any natural or artificial watercourse, including but not limited to streams, rivers, creeks, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes in which water flows in a definite direction or course, either continuously or intermittently, and including any area adjacent to it that is subject to inundation by reason of overflow or floodwater.
- GG. “Wetlands” means those areas that have a predominance of hydric soils and that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include the following surface waters of the state intentionally constructed from sites that are not wetlands: drainage ditches, grass-lined swales, and landscape amenities.

#### **5-705. Permits Required**

- A. No person may engage in any land disturbance activity, including the installation of sanitary sewers, without first, in accordance with Sections 5-706 and 5-707, obtaining a permit from the City.
- B. This Act shall not be construed to be in conflict with any state law intended to control erosion and sedimentation. In those instances where state law imposes a duty or requirement with respect to a matter covered by this Act, the more environmentally stringent duty or requirement shall control.
- C. Neither a permit nor an approved erosion and sediment plan is required under this Act solely for:
- a. any land disturbance activity:
    - i. that disturbs less than 1 acre of surface area;
    - ii. for or related to 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 AG District;
    - iii. for or related to landscaping or home gardening;

- iv. for or related to reestablishment of lawn areas; or
- v. for or related to any emergency activity that is immediately necessary for the protection of life, property, or natural resources;

provided that, if one or more of the above activities is undertaken as a part of or in conjunction with an activity involving building or development that otherwise requires issuance of a building permit, pursuant to Chapter 5, Article 2 or any other provision of the City Code, this Section does not alter the requirement that a building permit shall be obtained for that activity or activities.

- D. The issuance of a permit shall constitute authorization to do only that work described or shown on the approved plan, all in strict compliance with the requirements of this Act, unless each and every modification or waiver is specifically listed and approved as required by Section 5-715 of this Act. Reasonable field modifications can be made pursuant to Section 5-715 C of this Act.
- E. The permittee and/or the permittee's agent, contractors and employees shall carry out the proposed work in accordance with the approved plan, and the permit, and in compliance with all applicable requirements or conditions.

**5-706. Authorization to Undertake Land Disturbance Activities: Component of Building Permits**

- A. A building permit must be obtained before any activity involving building or development resulting in land disturbance is initiated, except as provided in Section 5-705 C. The authority to undertake any of these activities shall be evidenced only by a valid building permit. Before a building permit is issued for these activities, the engineered plans specified in Section 5-708 must be submitted to the City and must contain the information and be in the form required therein, subject to the provisions of Section 5-707 and 5-708. In effect, Sections 5-707 and 5-708 set forth application submission requirements for activities involving building or development resulting in land disturbance that are in addition to the application submission requirements specified in Chapter 5, Articles 1 and 2 of the City Code.
- B. If an individual proposes to undertake a land disturbance activity that does not, pursuant to any other section of the Code, require issuance of a building permit (such as, but not limited to, installation of sanitary sewers), the individual shall not, except as provided in Section 5-705 C, initiate land disturbance activities until a land disturbance permit is obtained.

**5-707. Permit or Plan Generally**

- A. Where activities involving building or development resulting in land disturbance are to be performed, the owner of a site, or the site owner's authorized representative, shall submit a complete building permit application in writing upon forms furnished by the City, which application shall include the engineered plans specified in Section 5-708.
- B. Where land disturbance activity is to be performed and the City Code does not otherwise require issuance of a building permit, the owner of the site or the site owner's authorized representative shall submit the engineered plans specified in Section 5-708 to the Planning Director.
- C. A permit must be issued in the name of the current property owner.
- D. No permit for activities that are not permitted by existing zoning, variances or other valid development approvals applicable to the land shall be approved.

- E. In making an application covered by this Act, the applicant or the landowner performing or allowing the work consents to the City's right to enter the site for the purpose of inspecting compliance with the approved plan or for performing any work necessary to bring the site into compliance with the approved plan.
- F. The engineered plans required by Section 5-708 are not intended to be duplicative of other provisions of this Act or Code. Accordingly, the required engineered plan may be included in or with any other development application(s) or submission(s) otherwise required by this Act or Code; provided that all the information required therein is in a form that can reasonably be evaluated by the designated decision maker. The decision concerning the form of the information submitted shall be made in the Planning Director's sole discretion. In addition, these Sections provide authority for the Planning Director to waive submission requirements determined not to be necessary to the evaluations that are required by this Act.

**5-708. Engineered Plans**

- A. If not otherwise included in a separate development application or applications that seek approval of the specific activity that will result in land disturbance, as provided by Section 5-707 F above, the following information shall be submitted to the Planning Director:
  - a. a site map in compliance with Section 5-709;
  - b. an erosion and sediment control plan in compliance with Section 5-710;
  - c. a work schedule in compliance with Section 5-711;
  - d. the permit fee as set forth in Section 5-718;
  - e. a performance guaranty as required by Section 5-724;
  - f. an engineering soils report in compliance with Section 5-712, when required by the City.
- B. The erosion and sediment control plan must be prepared and certified by a Professional Engineer or by a Certified Professional in Erosion and Sediment Control.
- C. The City may require any additional information or data deemed appropriate and/or may impose conditions thereto as the Planning Director may deem necessary to ensure compliance with the provisions of this Act and to preserve public health and safety.
- D. The Planning Director may waive the requirements for maps, plans, reports or drawings, if the Planning Director finds that the information otherwise submitted or to be submitted will be sufficient to show that the proposed work will conform to the requirements of this Act.
- E. The applicant is bound by information submitted and by this Act.
- F. Failure to comply with these requirements may result in the City requiring submission and approval of a plan and the issuance of a permit.
- G. Land disturbance activity may not take place in the City until a permit has been issued, as described in Sections 5-705, 5-706, and 5-707, and the Planning Director has determined that an acceptable performance guaranty has been obtained.

**5-709. Site Map and Existing Conditions.**

- A. Subject to Section 5-708 A, the applicant shall submit a site map that contains all of the information specified in the *Erosion and Sediment Control Manual* required by Section 5-713 of this Act;
- B. An attached vicinity map showing the location of the site in relation to the surrounding area's watercourses, water bodies, other significant geographic and natural features, and street and other significant structures;
- C. Existing and proposed topography of the entire site with contour lines drawn with one chosen interval in accordance with the following table:

<b>Ground Slope</b>	<b>Contour Interval (in feet)</b>
Flat; 0-2%	0.5 or 1
Rolling: 2-8%	1 or 2
Steep: 8%+	2, 5 or 10

- D. Show on/off-site drainage, including the subwatershed as well as the entire drainage basin;
- E. Identify if receiving water body is classified as impaired by the Kansas Department of Health and Environment and, if so, list impairments;
- F. Site's property lines shown in true location with respect to the plan's topographic information;
- G. Graphic representation of the location of all existing and proposed natural and man-made drainage facilities;
- H. Graphic representation of the location of and legend of soil types (including source of information);
- I. A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site, or a statement that there are no wetlands, detention areas, or drainage ditches located on the property;
- J. A clear and definite delineation of any drainage, sanitary, utility, or other easement(s) on or near the site;
- K. A clear and definite delineation of applicant's determination, based on the best available information and sound engineering principles of the existence of a regulatory 100-year floodplain, as defined in 5-704, and of any fully urbanized floodplain on or near the site as determined by a Johnson County watershed study or a statement that there are no such floodplains located on the property;
- L. Graphic representation of location of proposed excavations and fills, of on-site storage of soil and other earthen material, and of on-site disposal or spoil areas;
- M. Location and legend of existing vegetative cover and the location and legend of vegetative cover to be left undisturbed;
- N. Location of existing surface runoff and erosion and sediment control measures;
- O. Quantity of soil in cubic yards to be excavated, filled, stored, or otherwise utilized on-site;



- P. Proposed sequence of excavation, filling, and soil or earthen material storage and disposal; and
- Q. The signature and seal of a Professional Engineer or a Certified Professional in Erosion and Sediment Control.

**5-710. Erosion and Sediment Control Plan.**

Subject to the provisions of Section 5-708 A, an applicant shall submit an erosion and sediment control plan that is drawn to an appropriate scale. This plan must include sufficient information to: evaluate the environmental characteristics of the affected area; assess the potential impacts of the proposed land disturbance on water resources; and assess proposed methods to minimize on-site soil erosion and prevent off-site sedimentation to the maximum extent practicable, including disturbance of topsoil and limitation on disturbance. The erosion and sediment control plan shall contain all of the information specified herein and meet all the erosion and sediment control design criteria established by the *Erosion and Sediment Control Manual* required by Section 5-713 of this Act.

- A. A letter of transmittal that includes a project narrative.
- B. Copies of NPDES, 404, and other applicable state and federal permit applications for the site or activity.
- C. A description of, and specifications for, the measures undertaken to reduce surface runoff and control erosion including, but not limited to, types and methods of applying soil protection blankets and mulches; designs and specifications for diversions, dikes, and drain protection; and a schedule for their maintenance and upkeep;
- D. A description of, and specifications for, the measures undertaken to retain sediment on the site, including, but not limited to, designs and specifications for silt fences, berms, and sediment detention facilities and a schedule for their maintenance and upkeep.
- E. A description of the temporary and permanent vegetative measures to be used, including but not limited to, seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, types and rate of lime and fertilizer application, kind and quantity of mulching, the type, location and extent of pre-existing undisturbed vegetation types, and vegetation to remain and a schedule for maintenance and upkeep.
- F. Alternative methods of stabilizing the site when either the establishment of vegetative cover is not performed in accordance with the work schedule, or is performed and is not effective, as determined at the discretion of the Public Works Director.
- G. The location and description visually depicted on a map, including design details, of each temporary and permanent erosion, surface runoff and sediment control measure and structure.
- H. Maximum surface runoff from the site, calculated using the best available information and sound engineering principles.
- I. Estimated duration of the permit as defined in Section 5-719.
- J. A statement noting that the contractor, developer, operator, and/or owner shall request the Public Works Director to inspect and approve work completed in accordance with the approved plan and in accordance with this Act. The contractor, developer, or owner shall be required to obtain written approval by the Public Works Director at the stages of development as outlined in Section 5-721.

- K. A signed statement on the plan by the owner, developer, operator, and/or contractor that any land disturbance activity, construction or development will be done pursuant to the plan.
- L. Quantity of soil in cubic yards to be excavated, filled, stored, or otherwise utilized on-site.
- M. Storm drainage system, including quantities of flow and site conditions around all points of surface water discharge from the site.
- N. Details of temporary and permanent erosion and sediment control measures, including a construction note on the plan stating: "*Prior to initial soil disturbance or redistribution, permanent or temporary erosion control shall be completed on all perimeter dikes, swales, ditches, perimeter slopes; all slopes greater than 3 horizontal to 1 vertical (3:1); and embankments of ponds, basins, and traps. Sediment control shall be completed within fourteen (14) calendar days on all other disturbed or graded areas. The requirements of this Section do not apply to those areas that are shown on the plan and are currently being used for material storage or for those areas which actual construction activities are currently being performed.*"

#### **5-711. Work Schedule**

Subject to Section 5-708 A, the applicant shall submit a chronological construction schedule for each activity specified herein and in the *Erosion and Sediment Control Manual* required by Section 5-713 of this Act:

- A. Identify and mark areas to be protected from disturbance.
- B. Clearing and grubbing for those areas necessary for installation of perimeter erosion control devices.
- C. Construction of perimeter erosion and sediment control devices.
- D. Installation of permanent and temporary stabilization measures.
- E. Remaining interior site clearing and grubbing.
- F. Street grading.
- G. Grading for the remainder of the site.
- H. Utility installation and statement of whether storm drains will be used or blocked after construction.
- I. Building, parking lot, and site construction.
- J. Final stabilization.
- K. Removal of temporary erosion control devices.
- L. Inspection and maintenance of all erosion and sediment control measures during the course of the project.

#### **5-712. Engineering Soils Report**

When the Planning Director determines that additional information is required to protect against erosion or other hazards, an engineering soils report shall, subject to Section 5-708 A, be submitted by applicant. This report shall be based on adequate and necessary test borings, giving an adequate description

of the soils of the site with conclusions and recommendations regarding the effect of soils conditions on the proposed development and giving opinions and recommendations covering the adequacy of site to be developed by the proposed land disturbance activity with respect to soils conditions. Recommendations included in the report and approved by the Planning Director shall be required in the plan. The engineering soils report shall include:

- A. Data regarding the nature, distribution, strength, and erodibility of existing soils;
- B. If applicable, data regarding the nature, distribution, strength, and erodibility of soil to be placed on the site;
- C. Conclusions and recommendations for grading procedures;
- D. Conclusions and recommended designs for interim soil stabilization devices and measures and for permanent soil stabilization after construction is completed;
- E. Design criteria for corrective measures when necessary;
- F. Opinions and recommendations covering the stability of the site;
- G. Subsurface conditions;
- H. Soil boring results; and
- I. Overview of geology of site.

**5-713. Erosion and Sediment Control Manual; Erosion and Sediment Control Design Criteria.**

- A. The City, by resolution, shall, from time to time, adopt an *Erosion and Sediment Control Manual*. The Public Works Director may recommend an existing manual to the Governing Body for adoption or may prepare or have prepared an *Erosion and Sediment Control Manual* and recommend its adoption by the City. The Public Works Director shall maintain the *Erosion and Sediment Control Manual* adopted by the City.
- B. In addition to the other requirements of this Title, the *Erosion and Sediment Control Manual* shall contain erosion and sediment control design criteria. These criteria shall, to the maximum extent practicable, be based on, but not limited to, the following principles:
  - a. Fit the development to existing site conditions;
  - b. Protect areas to be disturbed from storm water runoff;
  - c. Minimize the extent and duration of exposure;
  - d. Stabilize disturbed areas and minimize erosion at the outlet of all pipes and paved channels;
  - e. Minimize sediment-laden runoff;
  - f. Retain sediment on the site;
  - g. Inspect and maintain control measures; and
  - h. Criteria shall conform to performance measures and meet or exceed outcomes, as

determined through a visual inspection of sediment transport within the site and sediment deposition off the site.

- C. Grading, erosion control practices, sediment control practices, and waterway crossings shall comply with the erosion and sediment control design criteria and shall be adequate to minimize erosion and the transportation of sediment from the site to the maximum extent practicable.
- D. Cut and fill slopes shall be no greater than 3:1, except as approved by the Planning Director to meet other community or environmental objectives.
- E. Clearing and grading of natural resources as previously defined by the City, such as designated natural stream assets, forests and wetlands as previously identified by the City, shall not be permitted, except when in compliance with this and all other Chapters of this Code. Land disturbance activities that retain natural vegetation and drainage patterns, as described in the *Erosion and Sediment Control Manual*, shall be used to the satisfaction of the Planning Director.
- F. Clearing, except that necessary to establish erosion and sediment control devices, shall not begin until all erosion and sediment control devices have been installed and the soil has been stabilized.
- G. Construction phasing is recommended for all sites but shall be required on all sites disturbing greater than twenty-five (25) acres, with the size of each phase to be established at the time of the consideration of the relevant development application or as approved by the Planning Director.
- H. Erosion control techniques shall include, but not be limited to, the following:
  - a. Soil stabilization of disturbed areas shall be completed after clearing and after periods of inactivity in construction of greater than fourteen (14) calendar days. If the Public Works Director determines that a site has a high potential for erosivity based on previous information submitted, he or she may direct that disturbed soil be stabilized after periods of inactivity in construction of more than forty-eight (48) hours;
  - b. If seeding or other vegetative erosion control methods are used, such seed or vegetative erosion control shall have germinated within two (2) weeks. If vegetative measures are not effective within this time frame, the Public Works Director may require the site to be reseeded or a non-vegetative option be employed;
  - c. Special techniques that meet the erosion and sediment control design criteria on steep slopes or in drainage ways shall be used to ensure stabilization;
  - d. Stabilization of soil stockpiles;
  - e. At the close of the construction season, all disturbed site surfaces must be stabilized, using a vegetative cover or a suitable mulch layer with tackifier or another method that does not require germination to control erosion;
  - f. Techniques shall be employed to minimize the blowing of dust or sediment from the site; and
  - g. Techniques that divert upland runoff past disturbed slopes shall be employed.
- I. Sediment control requirements shall include, but not be limited to, the following:

- a. Settling basins, sediment traps, or tanks and perimeter controls;
  - b. Settling basins that are designed in a manner which allows adaptation to provide long term storm water management, if required by the Planning Director; or
  - c. Protection for adjacent properties and waterways by the use of a vegetated buffer strip in combination with perimeter controls.
- J. Waterway and watercourse protection requirements shall include, but not be limited to:
- a. A temporary stream crossing, approved by the Planning Director, shall be installed if a wet watercourse will be crossed regularly during construction, but only if the Planning Director determines that the stream crossing will not cause flooding of adjacent property or damage the riparian corridor in which such a crossing is to be constructed;
  - b. Stabilization of the watercourse channel before, during, and after any in-channel work;
  - c. All on-site storm water conveyance channels designed according to the erosion and sediment control design requirements; or
  - d. Stabilization to prevent erosion at the outlets of all pipes and paved channels.
- K. Construction site access requirements shall include, but not be limited to:
- a. A temporary access road provided at all sites; or
  - b. Other measures required by the Planning Director to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

**5-714. Stormwater Pollution Prevention Plan (SWP2 Plan)**

- A. Before starting construction, the applicant shall develop a Stormwater Pollution Prevention Plan (SWP2 Plan) that contains all the information specified in Part VII of the Kansas Water Pollution Control General Permit and Authorization to Discharge Stormwater Runoff From Construction Activities (General Permit No.: S-MCST-0110-1). The SWP2 Plan shall be implemented during the duration of the construction project.
- B. The SWP2 Plan must outline measures to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.
- C. The SWP2 Plan must be kept onsite during the duration of the construction project and made available during inspection.

**5-715. Review and Approval.**

- A. The City will review all submissions required by this Act to determine their conformance with the provisions of this Act and the erosion and sediment control design criteria. Within ten (10) working days after receiving all required submissions, the Planning Director, in writing, shall:
  - a. If a building permit is otherwise required:
    - i. Approve the plan and notify the Building Official that all requirements of this Act

have been met and that the permit may be issued; or

- ii. Conditionally approve the plan and notify the Building Official that the requirements of this Act have been met and that the building permit may be issued, subject to conditions as may be necessary to substantially secure the objectives of this Act, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or private property; or
- iii. Disapprove the plan and notify the Building Official that the requirements of this Act have not been met, indicating those requirement(s) that have not been met and the procedure for submitting revised information and/or submittals.

b. If a building permit is not otherwise required:

- i. Approve the plan and issue a land disturbance permit; or
- ii. Conditionally approve the plan and issue a land disturbance permit subject to conditions as may be necessary to substantially secure the objectives of this Act, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or a private property; or
- iii. Disapprove the plan and inform the applicant in writing of those requirement(s) that have not been met and the procedure for submitting revised information and/or submittals.

B. Failure of the Planning Director to act on the original or revised complete submission required by this Act within ten (10) working days of receipt shall authorize the applicant to proceed in accordance with the plan as filed unless the time is extended by agreement between the applicant and Planning Director.

C. The Planning Director may approve a plan and authorize the Building Official to issue a building permit or may issue a land disturbance permit if all required submittals comply with all the requirements of Sections 5-701 through 5-714 and the Planning Director determines that best management practices will be employed to control erosion and sedimentation to the maximum extent practicable.

#### **5-716. Conditions of Approval.**

In approving the issuance of any permit, the Planning Director may impose any conditions as may be reasonably necessary to secure the objectives of this Act, prevent the creation of a nuisance or unreasonable hazard to persons or to a public or private property. These conditions may include (even if not specifically written in the permit), but need not be limited to:

- A. 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;
- B. Adequate control of construction related dust by watering or other control methods acceptable to the Planning Director;
- C. 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 Act for land disturbance, drainage, and erosion control;

- D. Installation of sediment traps and basins in a densely populated area; and
- E. In the proximity of an elementary school, playground, or other areas where small children may congregate without adult supervision, the installation of additional safety related devices.

**5-717. Modifications of Plans.**

- A. Modifications of the approved plan must be submitted to the City, and shall be reprocessed in the same manner as the original plan, where:
  - a. Field inspection or evaluation has revealed the inadequacy of the approved plan to accomplish its erosion and sediment control objectives; or
  - b. The person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.
- B. The Public Works Director may, in emergency situations and at the Public Works Director's discretion, require the installation of interim erosion and sediment control measures that will remain in effect until modifications or revisions to the plan are approved and implemented, to protect stream channels, other properties, or the general public from damage.
- C. Field modifications of a minor nature may be authorized by the Public Works Director, provided that those modifications are consistent with the erosion and sediment control design criteria of this Act and the *Erosion and Sediment Control Manual*. The Public Works Director may establish a list of allowable field modifications for this purpose that shall be included in the *Erosion and Sediment Control Manual*.

**5-718. Fees.**

Before issuance of a permit, the applicant shall pay a fee, which shall be in addition to the building permit fee if otherwise applicable, to cover the cost of administration, plan review, and inspection services associated with evaluation of submittals and permits required by this Act. The amount of the fee shall be established by the Governing Body by resolution or ordinance.

**5-719. Permit and/or Approved Plan, Expiration and Renewal.**

- A. The permit shall be valid from the time that it is issued until a final certificate of occupancy or completion certificate pursuant to Section 5-726 has been issued.
- B. If the permittee sells the property before the expiration of the permit, the permit may be assigned to the new owner of the site if the assignment is approved in writing by the Planning Director, provided that the permittee shall remain responsible for compliance with the permit until a final certificate of occupancy is issued or a completion certificate is issued pursuant to Section 5-726.
- C. If the permittee sells any portion of the property before the expiration of the permit, the permittee will remain responsible for that portion of the property until one of the following events occur:
  - a. The new owners of the property, with respect to property covered by a permit, makes all submissions required by this Act, which are not waived, to the Planning Director, and he or she approves the plan and issues the new owner a permit; or
  - b. The new owner of the property obtains a building permit for that portion of the property sold by the permittee. When a new owner has contiguous lots totaling less than one (1) acre, the new owner may design a plan for the contiguous lots as approved by the Planning Director.

### **5-720. Coordination with Other Permits**

When a person is developing a site and a permit is required, in accordance with Section 5-705 of this Act, no other construction permits shall be issued to make improvements on that site until the person has secured the permit required by this Act for the same site. This includes all permits issued by another City department.

### **5-721. Inspections.**

- A. It shall be the duty of the permittee to routinely inspect the construction site and maintain effective erosion and sediment control measures. Routine inspections shall be performed once per month or more frequently if required on the Plan and within twenty-four (24) hours following each rainfall event of ½ inch or more within any twenty-four (24) hour period. A log shall be kept of these inspections. Any deficiencies shall be noted in a report of the inspection, which inspection report shall include the action taken to correct the deficiency. Inspection reports shall be submitted to the Public Works Director upon request. The inspection report shall include the following minimum information:
  - a. Inspector's name
  - b. Date of inspection
  - c. Observations relative to the effectiveness of the erosion and sediment control measures
  - d. Actions necessary to correct deficiencies
  - e. Signature of person performing the inspection
- B. Authorized representatives of the City may enter properties upon which land disturbance activities are occurring for the purpose of inspection and enforcement of the provisions of the Act.
- C. Land disturbance activity may not proceed until a permit has been issued by the City in accordance with this Act. 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 Planning Director.
- D. The permittee shall notify the City forty-eight (48) hours before commencing any land disturbance activity and, if required by the Public Works Director, hold a pre-construction meeting between the permittee or the representative of the permittee and an authorized representative of the Public Works Director.
- E. A copy of the permit must be available on the site for inspection by authorized representatives of the City. 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.
- F. Each site that has an approved plan must be inspected as necessary to ensure that erosion and sediment control measures are installed and effectively maintained in compliance with the approved plan and permit. At the discretion of the Public Works Director, inspections may occur at any or all of the following stages:
  - a. Upon completion of installation of perimeter erosion and sediment controls, prior to proceeding with any other land disturbance activity, and other building or grading inspection approvals may not be authorized until initial approval by the Public Works Director occurs;
  - b. During the construction of sediment basins or storm water management structures, at the inspection points required by the permit;
  - c. During rough grading, including hauling of imported or wasted materials;



- d. Prior to the removal or substantial modification of any erosion and sediment control measure or practice; and
- e. Upon completion of final grading, including establishment of ground covers and planting, installation of all vegetative measures, and all other work in accordance with the approved plan.

Requests for inspection shall be made at least twenty-four (24) hours in advance (exclusive of Saturdays, Sundays, and holidays) of the time the inspection is desired.

- G. If there is a failure to comply with the requirements of this Act, the Public Works Director must inspect the work and notify the permittee or the representative of the permittee in writing. The notice issued must, at a minimum, state the nature of the violation, any practice or approved plan deficiencies, required corrective action, and compliance time. Any portion of the work that does not comply must be corrected promptly by the permittee. The City may make additional inspections as it deems necessary and has the right to waive inspections, excluding the final inspection as provided in Section 5-726. The Public Works Director shall maintain a permanent record of each inspection. Included in the record must be the date, the location or project identification, whether or not the approved plan has been implemented and measures maintained, and, if a violation exists, the type of enforcement action taken.
- H. When an approved plan shows the use of temporary basins or permanent storm water management structures, the Public Works Director may require the submission of supportive documents, such as test results, as-built plans, or material certifications. If necessary, in addition to its own inspections, the City may require that any portion of the construction of said basins or structures be inspected and certified by a licensed Professional Engineer or Land Surveyor. At the Public Works Director's option, the permittee may secure the services of a Professional Engineer or licensed Land Surveyor to inspect the construction of the facilities and to provide the City with a fully documented certification that all construction is done, to the best of his/her knowledge, in accordance with the provisions of the approved plan, applicable rules, regulations and criteria. If a certification is provided to the City, inspections required under this Section 5-721 of the basin or structure may be waived. In these cases, the Public Works Director must be notified at the required inspection points and may make spot inspections.

#### **5-722. Action Upon Noncompliance**

In the event work does not conform to the permit or conditions of approval or to the approved plan or to any instructions of the City, notice to comply shall be given to the permittee in writing. After a notice to comply is given, the permittee or the permittee's contractor(s) shall be required to make the corrections within the time period determined by the City. If an imminent hazard exists, the City shall require that the corrective work begin immediately.

#### **5-723. Permit Suspensions and Revocation; Stop Work Order**

- A. Any permit may be suspended by the City, after notice, if the Public Works Director determines that:
  - a. The site is not in substantial compliance with the approved plan or any permit condition;
  - b. A violation of any provision of this Act or any other applicable law, ordinance, rule, or regulation relating to the work exists;
  - c. A condition exists or any act is being done that constitutes or will create a nuisance or hazard or endangers or will endanger human life or the property of others; or

- d. The approved plan is failing to achieve required erosion and sediment control objectives due to improper control feature installation or maintenance, improper control feature material specification, or failure of said control features to perform anticipated erosion and sediment control functions successfully as required by this Act.
- B. In addition to the authority under subsection A, the City may post a site with a stop work order directing that all land disturbance activity cease immediately, provided that:
  - a. The Public Works Director determines that the land disturbance activity violates a condition or requirement of the permit or approved plan or any provisions of this Act or regulations;
  - b. Written warning notice is furnished to the permittee or the permittee's representative that lists corrective measures required and the time within which the corrections must be made; and
  - c. The permittee fails to comply with the warning notice within the specified time.
- C. For the purposes of this Section, a stop work order is validly posted 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.
- D. A stop work order may be issued without warning notice where the Public Works Director determines that:
  - a. Land disturbance is taking place that requires a permit under this Act, and a permit has not been approved;
  - b. Required erosion and sediment control measures are not installed, inspected, and approved before the land disturbance;
  - c. The limits of disturbance are being violated; or
  - d. Inspection reveals the existence of any condition or any act that:
    - i. is or will create a nuisance or hazard; or
    - ii. endangers human life or the property of others.
- E. The City must provide written notice to the permittee or a representative of the permittee when a stop work order is issued. A copy of the order, in the case of work for which there is a permit, shall be mailed by first class mail, postage prepaid, to the address listed by the permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as owner of the property by the Johnson County, Kansas Register of Deeds. That notice must specify the extent to which work is stopped and the conditions under which work may resume. The permittee is responsible for the actions of agents of the permittee and must notify those agents when a stop work order is issued that will affect an area within which the agents are to work. In this regard, "agent" is defined as any person who acts at the instruction, with the permission, or to the benefit of the permittee.
- F. A person must not continue or permit the continuance of work in an area covered by a stop work order, except work required to correct deficiencies with respect to an erosion or sediment control

measure.

- G. Ten (10) working days after posting a stop work order, the Public Works Director, if the conditions specified in the stop work order to resume work have not been satisfied, may issue a notice to the permittee, owner, or land user of the City's intent to perform work necessary to comply with this Act. The City may go on the land and commence work after fourteen (14) working days from issuing the notice of intent. The costs incurred by the City to perform this work shall be paid by the owner or permittee out of the performance guaranty required by Section 5-724 to the extent that the amount is covered thereby, with the remainder being directly due and owing by the owner or permittee, as set forth in Section 5-724 D hereof. In the event no permit was issued or no performance guaranty was posted, the cost, plus interest at the rate authorized by the City, plus a reasonable administrative fee shall be billed to the owner. If in any event the amount due is not paid, the City Clerk shall certify the amount due to the Clerk of Johnson County, Kansas, and it shall, in accordance with law, become a lien upon all property and all rights to property, real or personal, of any person liable to pay the amount due. This amount shall be listed on the tax bill and be collected in the manner of ordinary taxes as authorized by law.
- H. The Public Works Director may authorize the Building Official to reinstate a suspended permit upon the permittee's correction of the cause of the suspension.
- I. The Public Works Director shall direct the Building Official to revoke the permit if the permittee fails or refuses to cease work pursuant to a stop work order issued in conformity with this Section.
- J. The Public Works Director may not direct the Building Official to reinstate a revoked permit.

**5-724. Performance Guaranty.**

- A. Prior to issuance of a permit, the applicant must submit a performance guaranty that meets the requirements specified in this Section and in a satisfactory form approved by the City Attorney. That instrument shall be conditioned upon the faithful performance of the terms of the permit, and the soil erosion and sediment control measures specified in the permit and approved plan, within the time specified by the Public Works Director or within any extension granted by the Public Works Director. The amount of the performance guaranty required by this Section shall be as determined by the Public Works Director to secure the costs of improvements required in an approved plan, and this amount shall be in addition to any other amounts necessary to secure the faithful performance of other acts required of permittee by the City that the performance guaranty is intended to cover. The Public Works Director may grant a partial or complete waiver of the performance guaranty, upon application, where the Public Works Director finds minimal impairment of existing surface drainage, minimal erosion hazard, and minimal sedimentation hazard upon any adjacent land or watercourse, and no hazard to human life or property.
- B. Whenever the City finds that a default has occurred in the performance of any term or condition of the permit, approved plan, or performance guaranty, or a violation of Section 5-727 or 5-728 has occurred, written notice of default must be given to the permittee and to the surety or issuing organization or entity. The notice must state the work to be done, the estimated cost, and the specified period of time deemed by the Public Works Director to be reasonably necessary for completion of the work.
- C. If a cash bond has been posted, notice of default as provided by the preceding paragraphs must be given to the permittee; and if compliance is not obtained within the time specified, the City may proceed, without delay and without further notice or proceedings, to use the cash deposited or any portion of the deposit to cause the required work to be done by contract or otherwise in the discretion of the Public Works Director.

- D. In the event of any alleged default in the performance of any term or condition of the performance guaranty, the City, the surety, the issuing organization or entity, or any person employed or engaged on its behalf has a right to go upon the site to complete the required work necessary to control erosion and sedimentation or to protect properties, watercourses, and persons. In the event the City undertakes this work with the funds from a forfeited performance guaranty, the funds must be used to pay the cost of contracting, including engineering and administration, for necessary restoration of the site to control erosion and sediment within the requirements of the approved plan, permit, or performance guaranty or this Act. If the cost of the work necessary to control erosion and sediment or to protect properties, watercourses, and persons exceeds the amount of the performance guaranty, the permittee shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the City. The cost of necessary work in excess of the performance guaranty shall be certified by the City Clerk to the Clerk of Johnson County, Kansas, and shall, to the extent authorized by law, become a lien upon all property and all rights to property, real or personal, of any person liable to pay that cost. The cost of removal shall be listed on the tax bill and be collected in the manner of ordinary taxes to the extent authorized by law.
- E. A person must not interfere with or obstruct the ingress or egress to or from a site or premises by an authorized representative or agent of any surety, issuing organization or entity, or the City engaged in completing the work required to be performed under the permit or in complying with the terms or conditions of the approved plan or the permit.
- F. A performance guaranty remains in full force and effect until a completion certificate is issued, pursuant to Section 5-726 of this Act, and all other permittee's acts covered by the performance guaranty have been determined to be complete in accordance with the applicable City Code provisions. A cash bond must be returned to the depositor or to the successors or assigns of the depositor upon issuance of a completion certificate for the work in accordance with Section 5-726 of this Act, except any portion that may have been used. Failure to renew the performance guaranty fourteen (14) calendar days prior to expiration shall be deemed a default.
- G. The Public Works Director shall immediately direct the Building Official to revoke the permit upon failure of any permittee to maintain the performance guaranty.

**5-725. Maintenance of Structures, Measures and Devices**

- A. The permittee or the owner of any property on which work has been done pursuant to a permit, or any other person or agent in control of that property, must inspect and maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, drains, dams and structures, plantings, vegetation, and other erosion and sediment control measures and devices. The permittee or owner, his or her agent, contractor, and employees shall, each day, maintain and repair all graded surfaces and erosion control facilities, drainage structures, and other protective devices, plantings, and ground cover installed while construction is active. After construction is complete, the owner or his or her agent shall continue to regularly inspect the vegetation until adequate turf or other suitable vegetative cover is established. Repair or restoration, and maintenance, must be in accordance with the approved plan and permit as required by this Act until permanent measures are accepted by the City.
- B. Any person who performs utility related work under a permit is responsible for the repair or maintenance of all erosion and sediment control measures affected by the utility construction. Repair or maintenance must be in accordance with subsection A of this Section.

**5-726. Completion.**

Immediately upon completion of the project and after the site is permanently stabilized, the permittee must notify the Public Works Director and schedule a final inspection. If, upon final inspection

of the project, the Director finds that all work subject to inspection has been satisfactorily completed in accordance with the requirements of this Act, the permit, and the approved plan, rules and regulations, and that any supporting documents required under Section 5-721 are accepted, a completion certificate covering the work must be issued to the permittee by the City.

**5-727. Protection of Adjacent Property During Land Disturbance Activities.**

A person must not initiate land disturbance activities sufficiently close to the property line so as to endanger any adjoining property, including a public street, sidewalk, or alley. The adjoining property should be supported and protected from damage that may result from land disturbance activities including, but not limited to, settling, cracking, vegetative damage, erosion, soil deposition, and excessive construction dust. If, in the opinion of the Public Works Director, the land disturbance activity creates a hazard to life or property that is not adequately safeguarded, the permittee must construct walls, fences, guard rails, or other structures to safeguard the adjoining private property or public street, sidewalk, alley, or other public property and persons, as the Public Works Director may require.

**5-728. Deposits of Soil or Other Material Prohibited.**

- A. A person must not engage in any land disturbance activity or by any action cause or permit any soil, earth, sand, gravel, rock, stone, or other material to be deposited upon or to roll, flow, or wash upon or over the premises of another without the express written consent of the owner of the premises affected. A person must not engage in any land disturbance activity or by any action cause or permit any 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, sewer, storm drain, watercourse, rights-of-way, or any public property.
- B. A person must not, when hauling soil, earth, sand, gravel, rock, stone, or other material over any public street, road, alley, or public property, allow those materials to blow or spill over and upon any street, road, alley, or public property or adjacent private property.
- C. 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 subsections A and B above, the person responsible must be notified and must cause the material to be removed from that property within twenty-four (24) hours. In the event of an immediate danger to the public health or safety, notice must be given by the most expeditious means, and the material must be removed immediately. In the event it is not so removed, the City may cause the removal. The cost of the removal by the City must be paid to the City by the person who failed to remove the material. The cost of removal may be certified by the City Clerk to the Clerk of Johnson County, Kansas, and shall, to the extent authorized by law, become a lien upon all property and all rights to property, real or personal, of any person liable to pay that cost. The cost of removal shall be listed on the tax bill and be collected in the manner of ordinary taxes to the extent authorized by law. In addition, the City may treat the failure to remove as a default on the performance guaranty and remedy the default as authorized by Section 5-724 B and 5-724 D. If costs are not fully paid by the performance guaranty, the amount unpaid may be collected as taxes as provided above.

**5-729. Liability.**

The permittee is responsible for safely and legally completing the project. Neither the issuance of a permit under the provisions of this Act, nor the compliance with the provisions hereto or with any condition imposed by the City, 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 City for damages to persons or property.

**5-730. Fines and Penalties.**

The City shall have the enforcement and remedial actions set forth in Articles 2 and 9 of Chapter 5

of the City Code if any person allows or performs a land disturbance activity without obtaining a permit, as required by this Act, allows or performs a land disturbance activity in a manner that does not comply with an approved plan or a permit, or works with a revoked or suspended permit.

**5-731. Post-construction stormwater runoff management system.**

These provisions, consisting of Sections 5-731 through 5-738, establish the post-construction stormwater runoff management system of the City, which shall be composed of all natural and manmade watercourses and drainage structures, both public and private, located in the City, as well as management controls and management practices as established in this article. These controls and practices shall limit any activity that will adversely affect the hydraulic function of detention facilities, open channels, drainage swales or enclosed stormwater conveyance systems.

**5-732. Public and private responsibilities.**

(a) *Public responsibilities.*

- (1) *Administration.* The administration of these regulations shall be the responsibility of the Public Works Director, who shall review and approve stormwater management plans as provided in this division.
- (2) *Operation and maintenance of publicly-owned facilities.* The City Public Works Department shall be responsible, during and after construction, for the operation and maintenance of all drainage structures and improved courses that are part of the stormwater runoff management system under public ownership and that are not constructed and maintained by or under the jurisdiction of any State or Federal agency.

(b) *Private responsibilities.*

- (1) Each developer of land within the City has the responsibility to provide on the developer's property all approved stormwater runoff management facilities to ensure the adequate drainage and control of stormwater on the developer's property both during and after construction of such facilities.
- (2) Each developer or owner has the responsibility and duty before and after construction to properly operate and maintain any on-site stormwater runoff control facility that has not been accepted for maintenance by the public. This responsibility is to be transmitted to subsequent owners through appropriate covenants or maintenance agreements as detailed in this Article.
- (3) At the sole discretion of the City, the City may accept dedication of any existing or future stormwater management facility for maintenance, provided that the facility meets all the requirements of this Article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for regular inspection and maintenance.

**5-733. Procedures for submittal.**

No development shall increase the quantity and rate of stormwater emanating from land areas, except in accordance with an approved stormwater management plan, as provided in these regulations. The stormwater management plan shall be prepared by a licensed professional engineer in the State. No building permits shall be issued until and unless the stormwater management plan has been approved by the Public Works Director.

**5-734. Submission of preliminary stormwater management plan.**

- (a) The purpose of the preliminary stormwater management plan is to determine whether City stormwater requirements will be met with the proposed stormwater management system. The preliminary stormwater management plan for any proposed development shall be submitted with the development plan.
- (b) The submission requirements in this division are not intended to be duplicative of other provisions of this article or this Code as they correspond to development-related activities. Accordingly, the

relevant submission requirements may be included in or with any other development applications or submissions otherwise required by this article or this Code. Therefore, to the extent that the proposed development activities require compliance with multiple sections and, consequently, require the submission of application components pursuant to different sections, these sections should allow for the substitution of similar application materials, regardless of presentation format, and should otherwise be interpreted in a light conducive to facilitating the application process; provided that all the information required therein is in a form that can reasonably be evaluated by the designated decision maker. The decision concerning the form of the information submitted shall be made in the Public Works Director's sole discretion. In addition, the primary decision maker has authority to waive submission requirements determined not to be necessary to the evaluations that are required by this division.

**5-735. Review of preliminary stormwater management plan.**

- (a) Following receipt of the preliminary stormwater management plan and information to be included with this plan, the general drainage concepts and planning proposals will be reviewed by the Public Works Director. A review meeting then may be scheduled by the Public Works Director with representatives of the developer, including the developer's engineer, to review the overall concepts included in the preliminary stormwater management plan. The preliminary stormwater management plan shall be submitted with the preliminary plat or development plan and shall not:
- (1) Cause flooding outside of the existing floodplain boundary during a one percent (1%) frequent flood that would not have occurred without the proposed improvements;
  - (2) Cause or increase flooding of existing structures;
  - (3) Contribute to unacceptable channel erosion as predicted using criteria established by the City. Unacceptable erosion will include: erosion outside the one percent (1%) floodplain, erosion encroachment close to existing structures, erosion encroachment into roads and infrastructure, threats to designated stream assets, and rapid progression of the channel erosion upstream;
  - (4) Contribute sedimentation to the channels or detention areas (the developer will be responsible for the removal and disposal of all sedimentation that occurs from failure of an approved erosion plan that has been contributed by the proposed development in the joint-use detention basins downstream of the proposed improvements); and
  - (5) Create or contribute adverse impacts to water quality.
- (b) The City shall consider the impacts to existing structures and other property downstream of the proposed project. This consideration shall extend to immediate impacts on adjacent properties and to the point where the proposed facility drainage area is ten percent (10%) or less of the basin area. The impacts from the flow rate, the velocity and the quality of the runoff shall be considered. The velocity shall not erode or deposit sediments in designated stream assets. The runoff should not contain excessive sediment concentrations, biological oxygen demand, dissolved oxygen, nutrient, organic, total dissolved solid, heavy metal or pathogen levels that threaten the viability and health of the designated stream assets or the joint-use or regional retention system. The threshold of acceptable limits shall be based on the limits set by KDHE in Article 16, Water Pollution Control, Surface Water Quality Standards, K.A.R. 28-16-28e.
- (c) In addition, the City's review and approval process shall involve the consideration of the applicant's use of alternative design methods to reduce imperviousness, peak flows, and velocities to minimize

erosion and sedimentation and to protect the water quality of the stormwater runoff discharged into the stormwater system.

- (d) Finally, the City shall consider the applicant's incorporation of multiple uses into the stormwater management facility/system. To the extent that recreational use, trails, open space, are utilized, the level of imperviousness may be increased at the discretion of the City.

**5-736. Final stormwater runoff management plan.**

Following review of the preliminary stormwater management plan and general approval of the preliminary stormwater management plan by the Public Works Director, a final stormwater management plan shall be prepared for each phase of the proposed project as each phase is developed and prior to the issuance of any building permit. A professional engineer, registered in the State, shall sign and properly seal the plan. The final plan shall constitute a refinement of the concepts approved in the preliminary stormwater management plan and shall include the information required in Section 5-734.

**5-737. Review and approval of final stormwater management plan.**

- (a) Final stormwater management plans shall be reviewed by the Public Works Director. The Public Works Director may, based on review of the submittal, approve the plan if the proposed development will provide management of stormwater runoff in accordance with the purposes, design criteria and performance standards of these regulations and the City's watershed management program and will not be detrimental to the public health, safety and general welfare. The Public Works Director may approve the stormwater management plan or conditionally approve the stormwater management plan, setting forth the conditions thereof. If it is determined that the proposed development will not properly manage stormwater runoff in accordance with these regulations, the Public Works Director shall reject the final stormwater management plan. If rejected, the application and data shall be returned to the applicant for resubmittal.
- (b) The Public Works Director shall have the authority to waive the requirement of a stormwater management plan meeting all of the requirements in those individual cases that involve the construction of a single building or an addition to an existing building or otherwise have no significant effect on the drainage characteristics of the watershed.

**5-738. Design criteria.**

Unless otherwise provided, Section 5600, Storm Drainage Systems and Facilities of the Standard Specifications and Design Criteria of the Kansas City Metropolitan Chapter of the American Public Works Association, dated February 16, 2011, is hereby incorporated by reference for the purpose of regulating and governing the design of improvements with respect to stormwater runoff.

**5-739. Regulations.**

The Public Works Director may prepare or cause to be prepared and may recommend the adoption of regulations necessary to implement this Act.

**5-740. Severability**

If any section, subsection, paragraph, sentence, clause or phrase in this Act or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Act.

**5-741. Other Laws**

Neither this Act nor any decision made with respect hereto exempts the applicant or any other person from other requirements of the City 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 the Act.

**5-742. Penalties.**

a. Any Person convicted of a violation of this Article shall be punished for that violation by a fine of not more than five hundred dollars (\$500.00) or by imprisonment of not more than one hundred eighty (180) days or by both such fine and imprisonment.

b. Every day that a violation continues shall be considered a separate offense for which the violator may be arrested, tried and convicted without necessity of further notice.