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ORDINANCE NO. 20262

AN ORDINANCE introduced by City Manager Brent Trout, concerning stormwater regulations, amending various sections in Chapters 13.25, 13.35, 17.10, 17.30 and 18.235 of the Topeka Municipal Code, repealing original sections and creating Chapter 13.40.

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

Section 1. That section 13.25.090, Dwelling unit and impervious surface calculation – Appeal, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Dwelling unit and impervious surface calculation – Appeal.

(a) Any person disagreeing with the calculation of the stormwater drainage fee, as provided in this article, or seeking a stormwater drainage fee adjustment based upon stormwater management practices, may appeal such fee determination to the Director within 30 days from the date of the last bill containing stormwater drainage fee charges. Any appeal shall be filed in writing and shall include a survey prepared by a land surveyor showing dwelling units, total property area, impervious area or nonresidential developed area, as appropriate, and a depiction of the stormwater management practices, as appropriate. The filing of an appeal with complete information shall stay the payment of the stormwater drainage fee. Any person seeking a stormwater drainage fee adjustment based upon stormwater management practices shall be current in the payment of the stormwater drainage fee. The Director may request additional information from the appealing party.

(b) Stormwater drainage fee adjustments for stormwater management practices may be considered for: reductions in stormwater release rates and provision of additional storage volume; reductions in runoff volume (including discharging to a

non-City drainage system); and properly designed, constructed and maintained existing detention facilities. The maximum fee adjustment is 30 percent for internally drained areas ~~or sites completely retaining the 100 year storage volume and where runoff is reduced to zero~~ is 40 percent. The maximum fee adjustment is 30 percent for drainages ~~sites completely draining to a non-City system~~ is 40 percent. The maximum fee adjustment for existing detention facilities meeting applicable City design standards and subject to proper maintenance and operation as determined by the City is 15 percent. ~~The maximum fee adjustment for detention, discharge/volume improvements and operation and maintenance is 25 percent if the release rate is limited to the two-year predeveloped flow and 15 percent for 100-year storage volume.~~ The maximum fee adjustment is 30 percent for sites limiting post-developed peak discharges to at or below pre-developed peak discharges for the 2-year, 5-year, 10-year, 25-year, 50-year and 100-year storm events; with each event receiving 5 percent reduction. The maximum fee adjustment is 10 percent for sites meeting the water quality level of service requirements per the City of Topeka Post-Construction Stormwater Quality Policy. An additional 10 percent reduction can be obtained for sites exceeding the water quality level of service requirements by 5 percent or more. All fee adjustments are subject to proper maintenance and operation of the stormwater facilities as determined by the City. Each site is limited to a fee adjustment of no more than 40 percent total. Based upon the information provided by the utility and the appealing party, the Director shall make a final calculation of the stormwater drainage fee. The Director shall notify the parties, in writing, of the Director's decision.

Section 2. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.35.005, which said section reads as follows:

54 **Design Policy Handbook and Design Criteria and Drafting Standards.**

55 (a) The Director is hereby authorized to adopt a City of Topeka Stormwater
56 BMP Design Policy Handbook and City of Topeka Stormwater Design Criteria and
57 Drafting Standards. Further, the Director may revise or amend the handbook and
58 standards from time to time.

59 (b) TMC Chapter 13.35 refers to City of Topeka Stormwater BMP Design
60 Policy Handbook (handbook) and the City of Topeka Design Criteria and Drafting
61 Standards (standards). The referenced handbook and standards shall be considered
62 an integral part of TMC Chapter 13.35 without separate adoption. Where provisions of
63 this chapter conflict with the handbook or standards, TMC Chapter 13.35 shall control.
64 Permissive and advisory provisions in the handbook and standards shall not be
65 construed as mandatory.

66 (c) Within the referenced handbook, the Director may allow administrative
67 variations to requirements stated in the handbook provided such variations do not result
68 in a reduction or elimination of stormwater performance criteria or a variation of
69 applicability or performance standard waiver criteria.

70 Section 3. That section 13.35.010, Applicability, of The Code of the City of
71 Topeka, Kansas, is hereby amended to read as follows:

72 **Applicability and performance standards.**

73 (a) Except as provided in TMC 13.35.020(d), unless an exception is granted
74 pursuant to TMC 13.30.080(d), ~~this chapter shall apply to the following~~ activities shall be
75 designed and constructed in conformance with this chapter and with the performance
76 standard(s) applicable to the project as established in this section:.

77 (1) Adherence to the stormwater quality performance standard shall be

78 required for All requests for approval of subdivision plats and site plans
79 pertaining to land development activities that are will:

80 (i) disturb an area greater than or equal to one acre of land,
81 including projects that ~~cause a land disturbance~~will disturb less than one
82 acre that are part of a larger common plan of development or sale; or

83 (2ii) ~~Land disturbance activities that are~~disturb less than one acre
84 of land but ~~located in~~will discharge stormwater runoff to an impacted
85 ~~watershed as determined by the Director based upon an engineering~~
86 ~~study~~waterbody.

87 (2) Adherence to the stormwater quantity performance standard shall
88 be required for all requests for approval of subdivision plats and site plans
89 pertaining to land development activities that will result in a total of 10,000 square
90 feet or more of impervious surface on the property, inclusive of any impervious
91 surfaces currently located, and to remain, on the property.

92 (b) Requests for approval of subdivision plats and site plans that do not meet
93 TMC 13.35.020(a) and (b) immediately above, but will result in concentrated flows, or
94 will include buffer areas required by TMC 17.10, or propose to change stormwater
95 drainage patterns or discharge points from their pre-project conditions shall comply with
96 TMC 13.35.050 and TMC 13.35.070 and may be subject to additional stormwater
97 requirements as deemed necessary by the Director to prevent pollution, erosion, and
98 flooding.

99 (c) Subdivision plats or site plans approved prior to January 1, 2021 shall be
100 subject to orders, regulations, ordinances, rules, expiration dates, or other properly
101 adopted requirements in effect at the time the original plat or plan was approved.

Section 3. That section 13.35.020, Waiver – Exemptions - Mitigations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Waiver – Exemptions – Mitigations.

(a) The Utilities Director may grant a waiver for one or more stormwater management requirements ~~if the standard can be met in any of the following ways for~~ projects that meet any of the following conditions:

(1) ~~Discharging the~~The project will discharge stormwater runoff to an ~~existing~~a stormwater management facility located offsite, whether public or private, that is ~~an off-site facility designed, adequately sized, constructed and maintained to provide a level of stormwater control that is equal to or greater than that which would be afforded by on-site practices and there is an entity responsible for long-term operation and maintenance of the stormwater practice, provided the developer produces a written agreement permitting the discharge of stormwater runoff and long-term operation and maintenance to the existing stormwater management facility~~achieve or exceed the required performance standard(s), inclusive of the stormwater runoff being discharged to the facility by the project. To receive this waiver, all of the following requirements shall be met:

(i) Stormwater runoff from the project shall not cause pollution, erosion, and flooding at any location between the project and the offsite facility, and shall not enter a stream, lake, or wetland prior to treatment by the offsite facility.

(ii) The offsite facility must be fully functional and operating in accordance with this chapter prior to construction of the project. If the offsite facility or any conveyances located downstream of the project must

126 be improved to meet these requirements, the applicant shall provide
127 design plans detailing the necessary improvements and their achievement
128 of the required standard(s). Improvements to offsite facilities shall adhere
129 to, without exception, this chapter, TMC 13.30, and the City of Topeka
130 Stormwater BMP Design Policy Handbook. The applicant is solely
131 responsible for coordination of all necessary improvements with the
132 owner(s) of the facility(s) and for ensuring said improvements are made in
133 accordance with these requirements.

134 (iii) The applicant shall obtain a legally-binding written
135 agreement signed by the owner(s) of the offsite facility acknowledging and
136 authorizing the discharge of stormwater runoff from the project to the
137 offsite facility(s) and clearly establishing the party responsible for the long-
138 term operation and maintenance of the facility in keeping with TMC 13.40.
139 This agreement shall be recorded by the applicant with the Shawnee
140 County Register of Deeds.

141 (2) An ~~E~~ngineering ~~studies~~study determines that installing a
142 stormwater management facility in order to meet the stormwater management
143 standards will cause adverse impact to water quality, or cause a negative impact
144 to a downstream channel or property.

145 (3) The stormwater quantity performance standard may be waived ~~F~~or
146 a redevelopment, if an engineering ~~studies~~study demonstrates there is no net
147 increase in stormwater runoff peak flow and volume from current conditions for
148 the stormwater quality design storm events established in the City of Topeka
149 Stormwater BMP Design Policy Handbook.

150 **(b)** In order to receive a waiver, the Director may require the applicant to
151 provide an engineering study which substantiates the criteria required to receive said
152 waiver. The study shall be prepared by a professional civil engineer licensed in the
153 State of Kansas and shall be performed in keeping with the City of Topeka Stormwater
154 BMP Design Policy Handbook. For waivers provided under TMC 13.35.020(a)(1),
155 provision of the approved as-built plan for the offsite stormwater management facility
156 may be sufficient for this purpose.

157 **(c)** A waiver from compliance with one or both performance standards shall
158 not be construed as a waiver or exemption from all other requirements in this chapter.

159 **(bd)** Acceptable mitigation measures may be required in order to prevent
160 deterioration of existing culverts, bridges, dams, and other structures, degradation of
161 biological functions or habitat, accelerated stream bank or stream bed erosion or
162 siltation, and increased threat of flood damage to public health, life, and property. Such
163 mitigation measures may include, but are not limited to:

164 (1) The purchase and donation of privately owned lands, or the
165 granting of an easement to be dedicated for preservation or reforestation.

166 (2) The creation of a stormwater management facility or other drainage
167 improvement on previously developed properties, public or private, that currently
168 lack stormwater management facilities.

169 (3) Granting an easement or dedicating land to the City to be used for
170 the construction of an off-site stormwater management facility. Such easement
171 shall be granted prior to issuance of any building permit.

172 ~~**(c)** A request for waiver shall not be granted without an engineering study~~
173 ~~shown in drainage plans submitted for new development or redevelopment that creates~~

~~additional impervious surfaces establishing the adequacy of downstream or shared off-site stormwater management facilities which offer equivalent or greater protection than the standard(s) for which a waiver is requested~~

(de) Site plans for construction or reconstruction of single-family and two-family dwellings on individual lots are exempt from this chapter unless they are located in an area which drains to an impacted waterway as deemed by the Utilities Director based on an engineering study if any of the following conditions apply:

(1) are located in a residential subdivision that was platted prior to August 29, 2011; or

(2) are located in a residential subdivision served by a stormwater management facility that is/was designed, adequately sized, constructed and maintained to achieve or exceed the required performance standard(s) for the subdivision in its fully-developed condition; or

(3) are designed to safely direct stormwater runoff generated by building rooftops to a vegetated channel or vegetated area before discharge to a street, gutter, waterbody, or the municipal stormwater system. The design must ensure stormwater runoff will not cause vegetation damage, soil erosion, and flooding on, or downstream of, the property.

(f) Developments or redevelopments for which a subdivision plat or site plan is not required shall be exempted from the requirements of this chapter.

(g) An exemption from this chapter shall not be construed as a release from onsite drainage improvements that may be necessary to avoid onsite or offsite flooding or erosion or are required in accordance with building and construction codes, nor from providing adequate erosion prevention and sediment control measures to protect

198 adjoining property owners, local waterways, and public right of way.

199 Section 3. That section 13.35.030, Performance criteria for stormwater
200 management, of The Code of the City of Topeka, Kansas, is hereby renumbered as
201 13.35.040 and amended to read as follows:

202 **Performance criteria**~~General requirements~~ **for stormwater management.**

203 All ~~subdivision plats and site plans~~projects shall meet the following requirements
204 for stormwater management:

205 ~~(a) Designs shall establish stormwater management practices to control peak~~
206 ~~flow rates of discharge according to the storm drainage design criteria. These practices~~
207 ~~should utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff~~
208 ~~from driveways, sidewalks, rooftops, parking lots, storage areas, and landscaped areas~~
209 ~~to the maximum extent practical to provide treatment for both water quality and quantity.~~

210 ~~(ba) All s~~Stormwater runoff generated from new developments shall not
211 discharge directly into a jurisdictional wetland or local water body without adequate
212 ~~treatment~~stormwater quality treatment as specified in the ~~Post Construction Stormwater~~
213 ~~Quality Policy~~City of Topeka Stormwater BMP Design Policy Handbook. Where such
214 discharges are proposed, they

215 (b) Designs shall meet all applicable local, State and Federal requirements,
216 permits, plans and programs. The owner is responsible for complying with all local State
217 and Federal permits that are applicable to the site.

218 ~~(c) BMPs~~Projects shall be designed to promote the natural infiltration of
219 stormwater to the maximum extent possible through the use of ~~structural and~~
220 ~~nonstructural methods~~sone or more low impact development practices described in the
221 City of Topeks Stormwater BMP Design Policy Handbook.

(d) ~~For new development and redevelopment, structural stormwater treatment practices shall meet the following performance standards:~~

(1) ~~Stormwater runoff shall be treated for water quality prior to discharge from the development site.~~

(2) ~~Designed according to the City of Topeka Design Criteria and Drafting Standards.~~

(3) ~~Reduce the discharge of the total maximum daily load (TMDL) regulated pollutants to an associated stream and/or lake as identified in the Post Construction Stormwater Quality Policy set forth by the Utilities Director.~~

(4) ~~Reduce the discharge of principal pollutants of concern as identified in the Post Construction Stormwater Quality Policy set forth by the Utilities Director.~~

(d) Permanent protection from soil erosion shall be provided wherever stormwater runoff discharges to a pervious surface, a vegetated stormwater management practice, a buffer area, at the inlets and outlets of stormwater management facilities and the storm drainage system, and at where runoff discharges from the project. Vegetated stabilization alternatives are preferred where appropriate.

Section 3. That section 13.35.040, Requirements for stormwater management plan approval, of The Code of the City of Topeka, Kansas, is hereby renumbered as 13.35.060 and amended to read as follows:

Requirements for stormwater management plan approval.

(a) Final Stormwater Management Plan. No application for subdivision plats or site plans to which this chapter applies shall be approved ~~unless the application includes~~ without the Director's prior approval of a final stormwater management plan

246 ~~detailing in concept how runoff and associated water quality impacts resulting from~~
247 ~~development will be controlled or managed~~which details design compliance with this
248 chapter.

249 (b) Stormwater Management Concept. The director may also require the
250 applicant to submit and secure the director's approval of a stormwater management
251 concept plan ~~shall include the following information~~ to evaluate the environmental
252 characteristics of the project site, the potential impacts of all proposed development of
253 the site, both present and future, on the water resources, and the effectiveness and
254 acceptability of the measures proposed for managing stormwater generated at the
255 project site: This may include a requirement for

256 (1) ~~A map (or maps) indicating the location of existing and proposed~~
257 ~~buildings, roads, parking areas, utilities, structural stormwater management and~~
258 ~~sediment control facilities. The map(s) will also clearly show proposed land use~~
259 ~~with tabulation of the percentage of surface area to be adapted to various uses,~~
260 ~~drainage patterns, locations of utilities, roads and easements, and the limits of~~
261 ~~clearing and grading. A written description of the site plan and justification of~~
262 ~~proposed changes in natural conditions may also be required.~~

263 (2) ~~A plan designed by qualified personnel showing that the proposed~~
264 ~~stormwater management measures are capable of controlling runoff from the site~~
265 ~~in compliance with this chapter and the specifications of the storm drainage~~
266 ~~design criteria.~~

267 (3) ~~A written or graphic inventory of the natural resources at the site~~
268 ~~and surrounding area as it exists prior to the commencement of the project and a~~
269 ~~description of the watershed and its relation to the project site. This description~~

shall address soil conditions, forest cover, topography, wetlands, native vegetative areas on the site, and environmentally sensitive features that provide particular opportunities or constraints for development.

(4) A written description of the individual(s) responsible for maintenance of the proposed plan.

(5) A written description of the maintenance that shall be performed by the responsible party.

(6) The Utilities Director may also require a concept plan to address the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.

(c) ~~Final Stormwater Management Plan Requirements.~~ Concept and final stormwater management plans shall be prepared, submitted, and approved in conformance with the City of Topeka Stormwater BMP Design Policy Handbook. ~~After review of the stormwater management concept plan, and modifications to that plan as deemed necessary by the Utilities Director, a final stormwater management plan shall be submitted for approval. The final stormwater management plan, in addition to the information from the concept plan, shall include the following:~~

(1) ~~Contact Information. The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.~~

(2) ~~Topographic Base Map. A one inch equals 200 feet topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates existing surface water drainage~~

including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.

(3) — Calculations. Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the storm drainage design criteria. Such calculations shall include (i) description of the design storm frequency, intensity and duration, (ii) time of concentration, (iii) soil curve numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for each watershed area, (v) infiltration rates, where applicable, (vi) culvert capacities, (vii) flow velocities, (viii) data on the increase in rate and volume of runoff for the design storms referenced in the storm drainage design criteria, and (ix) documentation of sources for all computation methods and field test results.

(4) — Soils Information. If a stormwater management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on the need to determine the suitability and distribution of soil types present at the location of the control measure.

(5) — Maintenance and Repair. The design and planning of all stormwater management facilities shall include detailed maintenance and repair procedures to ensure their continued function, as well as the individual(s) responsible for such maintenance. The applicant shall identify the parts or components of a stormwater management facility that need to be maintained and

the equipment, skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included.

~~(6) — Landscaping. The applicant shall present a detailed plan for management of vegetation at the site after construction is finished, including responsibility for the maintenance of vegetation at the site and the practices employed to ensure that adequate vegetative cover is preserved. These provisions shall be prepared by qualified personnel.~~

~~(7) — Easements. The applicant shall provide access to the City for all stormwater treatment facilities or easements at the site for the purpose of inspection and repair by securing all the necessary easements needed on a permanent basis. These easements will be shown on the recorded plat or granted by separate instrument and shall run with the land.~~

(d) Portions of the stormwater management plan that require hydrologic and hydraulic analysis or design shall be prepared by a professional engineer licensed to practice in the State of Kansas and proficient in the design of stormwater management facilities and storm drainage systems.

(8e) Erosion and Sediment Control Plans for Construction of Stormwater Management Measures. The applicant shall prepare an erosion and sediment control plan or submit a SWPPP for all construction activities related to implementing any on-site stormwater management practices.

~~(9) — Other Environmental Permits. The applicant shall ensure that all other applicable environmental permits have been acquired for the site prior to approval of the final stormwater design plan.~~

~~(10) Requirement for Stabilization. Banks of all streams, channels, ditches and other earthen stormwater conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.~~

~~(11) All stormwater facilities and systems, including those designed and constructed for water quality treatment, downstream channel stabilization, and peak discharge control, shall be designed, constructed and maintained in accordance with the criteria, standards, and specifications presented in this chapter, or other professionally accepted manual for stormwater quality management. The standards for water quality treatment, downstream channel stabilization and peak discharge analysis and control shall be achieved through the use of one or more stormwater quality management facilities that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in a professionally accepted manual for stormwater quality or other acceptable professional methods. Methods, designs or technologies for stormwater quality management facilities that are not provided in any stormwater quality manual may be submitted for approval if it is proven that such methods, designs or technologies will meet or exceed the stormwater treatment standards set forth in this chapter.~~

Section 4. That section 13.35.050, Construction inspection, of The Code of the City of Topeka, Kansas, is hereby renumbered as 13.35.080 and amended to read as follows:

Requirements during Construction inspection.

366 (a) Construction of the project shall not deviate from the approved stormwater
367 management plan without the prior written approval from the director. The applicant is
368 responsible for adherence to this requirement by all persons acting on his/her behalf
369 during construction and until issuance of the certificate of occupancy.

370 (ab) The Utilities Director shall have the right to perform inspections ~~during the~~
371 ~~construction of the stormwater management system~~facilities during project construction
372 to assess construction conformity to the approved stormwater management plan and
373 observe the condition of the facilities throughout construction of the project. The
374 Planning and Development director in his sole discretion, may withhold or revoke
375 issuance of a certificate of occupancy, or may issue a temporary certificate of
376 occupancy, pending satisfactory completion of corrective action(s) for failure to comply
377 with any of the provisions of this section.

378 ~~(b) As-Built Plans. All applicants shall submit actual “as-built” plans for any~~
379 ~~stormwater management practices located on site after final construction is completed.~~
380 ~~The plan shall identify the final design specifications for all stormwater management~~
381 ~~facilities and shall be certified by qualified personnel.~~

382 (c) During clearing, grading, and construction of a project, the following
383 requirements shall apply to green infrastructure stormwater management facilities:

384 (1) Areas where green infrastructure stormwater management facilities
385 will be, or are, located shall be protected from encroachment by heavy
386 equipment, vehicles, and construction materials storage at all times to avoid soil
387 compaction.

388 (i) Said areas shall be cordoned-off with a highly visible barrier,
389 such as orange construction fencing, and shall not be encroached upon or

otherwise disturbed unless they are being established, constructed, restored, or enhanced as provided for in an approved stormwater management plan. Protection measures shall be installed prior to, or if more practical during, clearing and grubbing of the land development.

(ii) Said areas shall be clearly identified on the stormwater management plan, on the SWPPP or erosion and sediment control plan, and on all construction drawings, and marked with the statement "Green Infrastructure Facility. Do not disturb." Temporary protection measures to be used during construction shall be shown on the stormwater management plan.

(2) The use of green infrastructure stormwater management facilities as sediment traps or for any other erosion and sediment control purpose before, during, or after construction, is expressly prohibited. Nor shall construction sediment from any area of the land development be allowed to discharge into, or through, areas where said facilities will be located.

(3) Erosion and sediment control measures installed to protect green infrastructure stormwater management facilities shall not be removed until construction in the stormwater contributing drainage area to the practice is fully completed and after one-hundred percent (100%) of the pervious surfaces in said area are fully vegetated or otherwise permanently stabilized to prevent soil erosion.

(4) Where encroachment, sedimentation, pollution, or other adverse condition is known or suspected as a result of clearing, grading, or construction, the director may require soil infiltration testing, soil amendment, or other

corrective action(s) to confirm or restore infiltration rates in the green infrastructure stormwater management facility to meet design requirements.

(d) Areas proposed for stormwater management facilities that are not green infrastructure may be used as sediment traps or for other soil erosion and sediment control purposes during construction if such use is approved in the SWPPP or erosion and sediment control plan. When such use is approved:

(1) the temporary use of the facility for soil erosion and sediment control shall be clearly noted in the stormwater management plan with detailed information on the sequence and method(s) to be employed to convert the facility from its temporary use to the permanent, post-construction condition indicated by the approved stormwater management plan; and,

(2) the facility shall not be modified to its permanent, post-construction condition as a permanent detention facility until land disturbance activities in the contributing drainage area are fully completed and seventy percent (70%) of the pervious surfaces in said area are fully vegetated or otherwise permanently stabilized to prevent soil erosion.

(e) Individual and collective stormwater drainage systems, stormwater management facilities shall not, at any time, be used for storage of construction or demolition-related chemicals, waste or garbage, either temporarily or permanently.

(f) Once a stormwater management facility is constructed, the applicant is responsible for operating and maintaining it in fully-functional condition pursuant to TMC 13.40 until transfer of ownership.

Section 5. That section 13.35.060, Maintenance and repair of stormwater facilities, of The Code of the City of Topeka, Kansas, is hereby renumbered as

13.35.050 and amended to read as follows:

**Maintenance and repair of stormwater~~General requirements for stormwater~~
management facilities.**

(a) The stormwater quality and quantity performance standards shall be achieved through the selection and design of one or more stormwater management facilities that are designed and constructed in accordance with the criteria, methods, specifications, and technologies presented in this chapter and the City of Topeka Stormwater BMP Design Policy Handbook. Other criteria, methods, specifications or technologies for stormwater management facilities may be submitted for approval if it is proven that they will meet or exceed the stormwater performance standards set forth in this chapter and the City of Topeka Stormwater BMP Design Policy Handbook.

(b) Stormwater management facilities for privately-owned land developments shall not be located in public rights-of-way or on public property without approval by the director.

(c) Stormwater management facilities, whether public or private, shall not be located within the critical zone (500 feet of centerline) of a flood control levee.

(ad) ~~Stormwater Management Easement. Prior to the approval of subdivision or site plan applications pertaining to land development activities described in TMC 13.35.010(a), t~~The owner of the site shall provide project shall secure all the necessary easements on a permanent basis, including a stormwater management easement for every stormwater management facility included in the project design. The stormwater management easement shall provide for access to the facility at reasonable times for periodic inspection by the City, or its contractor or agent, and shall require the property owner to ensure that the facility is maintained in proper working condition to meet

design standards and any other provisions established by this chapter. ~~The stormwater management~~All easements shall be shown on the recorded plat or granted by separate, recorded instrument and shall run with the land until they are lawfully released.

~~(b) — Inspection of Stormwater Facilities. The Utilities Director shall have the ability to conduct inspections of the stormwater facilities. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.~~

~~(c) — Failure to Maintain Practices. If a responsible party fails or refuses to meet the requirements set forth in the stormwater management plan, the City, after reasonable notice, may pursue enforcement of the plan or the provisions of this chapter.~~

(e) Stormwater management facilities shall not be designed to include, or imply support for, the prohibited conditions for stormwater management facilities established in TMC 13.40.040.

(f) The director may require reselection, relocation, or redesign of stormwater management facilities and detention facilities proposed to comply with this chapter if the director deems them unfeasible for the hydrologic or hydraulic setting or impractical for property owner operation and maintenance.

(g) Onsite tests to determine soil infiltration, permeability, or capacity for purposes of designing infiltration-based stormwater management practices shall be performed by a soil scientist, geologist, or geotechnical engineer licensed to practice as a professional in the State of Kansas.

Section 6. That the Code of the City of Topeka, Kansas, is hereby amended

by adding a section, to be numbered 13.35.030, which said section reads as follows:

Additional or increased performance standards.

(a) The director may require adherence to additional or increased performance standards for stormwater management at any project that will:

(1) discharge stormwater runoff to an impacted waterbody; or

(2) discharge stormwater runoff to a downstream stormwater drainage system that may not be able to safely control or could be damaged by the stormwater runoff from the project; or

(3) be located in, or will discharge stormwater runoff to, an area or stream having an engineering study which indicates a greater need for control of stormwater runoff in order to alleviate or avoid waterway pollution, erosion, flood, or drainage problems.

(4) be located in, or discharge stormwater runoff to, an area or waterbody where erosion, flooding, or stormwater drainage problems are known to exist, whether said problems are documented or not, and where the director has reason to believe the project, once constructed, may further exacerbate such problems.

(5) discharge stormwater runoff to a waterbody that is identified by the State of Kansas as Outstanding National Resource Waters (ONRW).

(6) be located on an existing brownfield or on a property known to have existing pollutants in the soil or on the ground that, if discharged from the property in stormwater runoff or groundwater, may cause harm to the general public or the environment.

(7) have a higher potential for pollutants to be exposed to rainfall or

510 stormwater runoff, once construction is completed.

511 Section 7. That the Code of the City of Topeka, Kansas, is hereby amended
512 by adding a section, to be numbered 13.35.070, which said section reads as follows:

513 **Amendment of an approved stormwater management plan.**

514 (a) An approved final stormwater management plan shall not be amended
515 without prior written notification and written approval of the alteration by the Director. A
516 written plan amendment shall be required. In the event of substantial amendments, the
517 Director may require submittal of a revised stormwater management plan.

518 (b) If the proposed specifications of the project change after approval of the
519 final stormwater management plan, the applicant shall notify the director immediately.
520 The director may require cessation of all, or a portion of, construction, and/or
521 resubmittal and approval of a revised stormwater management plan, or appropriate
522 portions thereof. Such proposed conditions include, but are not limited to, the intended
523 land use, impervious surfaces layout and surface areas, extents of clearing and grading,
524 and the selection, location, or design of stormwater management facilities.

525 (c) Approval of a stormwater management plan shall not prevent the director
526 from thereafter requiring the correction of errors or revisions to the plan due to
527 unforeseen geologic, hydrologic, hydraulic, or construction-related conditions
528 encountered after plan approval.

529 (d) When revision of an approved stormwater management plan is required,
530 the director may also require the cessation of all, or a portion of, land disturbance or
531 construction activities pending his/her approval of a revised plan.

532 Section 8. That the Code of the City of Topeka, Kansas, is hereby amended
533 by adding a section, to be numbered 13.35.090, which said section reads as follows:

Requirements at construction termination.

(a) Upon completion of construction, stormwater management facilities and onsite drainage system shall be clean, free of sediment, trash, and debris, undamaged, and operating at fully functional design capacity as indicated in the approved stormwater management plan.

(b) Requirement for stabilization. Banks of all streams, channels, ditches and other earthen stormwater conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.

(c) Stormwater BMP Record Drawing. All applicants shall submit a stormwater BMP record drawing for any stormwater management facilities located on site after final construction is completed. The drawing shall fully and accurately show the constructed condition of all the stormwater management facilities at the project, including but not limited to, facility location, type, grading, capacity, dimensional and material specifications of required major components and appurtenances, geotechnical conditions, vegetation types and location, flow direction, and relevant easement boundaries. Verification of design parameters, such as infiltration rate, may also be required as appropriate for the facility type.

(1) The drawing shall be prepared by a professional engineer, landscape architect, or registered land surveyor licensed or registered to practice in the State of Kansas, in accordance with requirements established in the City of Topeka Stormwater BMP Design Policy Handbook.

(2) The drawing shall be prepared after all stormwater management facilities used during construction as temporary sediment traps or for other soil

erosion and sediment control purposes are modified to, and functioning in, their permanent, post-construction condition in keeping with the approved stormwater management plan.

(3) The drawing shall be signed by the owner and recorded by the Shawnee County Register of Deeds as a covenant running with the land.

(4) The drawing may be reviewed by the director to evaluate conformance of the construction stormwater management facilities with their approved designs as shown in the approved stormwater management plan. If any constructed facility is determined to deviate from approved design, the director may require:

(i) corrective actions to bring the deviant facility into conformance with the design shown in the approved final stormwater management plan; and/or

(ii) engineering study to demonstrate that the constructed condition of the deviant facility meets or exceeds the requirements of this chapter and the City of Topeka Stormwater BMP Design Policy Handbook; and/or

(iii) preparation and approval of an amended stormwater management plan, as-built plan, or operation and maintenance plan or portions of these plans as necessary to ensure all project documentation are consistent with the actual conditions of the constructed project and its stormwater management facilities; and/or

(iv) re-recording of the revised drawing or easements as necessary to ensure all legal instruments are consistent and accurate with the actual

581 conditions of the constructed project and its stormwater management
582 facilities.

583 (5) Modification or release of the recorded covenant that
584 encompasses a stormwater management facility may be allowed if the facility
585 encompassed by the covenant:

586 (i) will be, or has been, removed or relocated due to lawful
587 redevelopment of a portion, or all, of the property; or

588 (ii) will be, or has been, lawfully altered or relocated such that the
589 drawing no longer reflects the actual type, condition, or location of
590 facility(s) located on the property; or

591 (iii) will be, or are, no longer needed due to lawful construction of
592 one or more alternate stormwater facilities, either on or off the property,
593 that will, or do, manage the stormwater runoff handled by the facility
594 encompassed under the covenant.

595 (d) Final inspection. After approval of the stormwater BMP record drawing,
596 the director may perform a final inspection of the constructed stormwater management
597 facilities and drainage system to assess conformity of the drawing to the actual
598 condition of stormwater management facilities and onsite drainage system, and to
599 evaluate compliance with TMC 13.35.100(a) and (b). The director may, alone or in
600 addition to other enforcement actions authorized by TMC 13.15, request the Planning
601 Director, in his sole discretion, to withhold issuance of a certificate of occupancy, to
602 grant a temporary certificate of occupancy or revoke an existing certificate of
603 occupancy pending satisfactory completion of corrective action(s) for failure to comply
604 with any of the provisions of this section.

605 Section 9. That the Code of the City of Topeka, Kansas, is hereby amended
606 by adding Chapter 13.40, titled "MAINTENANCE OF STORMWATER MANAGEMENT
607 FACILITIES."

608 Section 10. That the Code of the City of Topeka, Kansas, is hereby amended
609 by adding a section, to be numbered 13.40.010, which said section reads as follows:

610 **Purpose and intent.**

611 The purpose of this chapter is to:

612 (a) Prevent the introduction of pollutants into the municipal stormwater system
613 which will interfere with the operation of the system;

614 (b) Prevent the introduction of pollutants into the municipal stormwater system
615 which will pass through the system, inadequately treated, into receiving waters;

616 (c) Prevent erosion and flooding of public and private properties caused by
617 uncontrolled stormwater runoff;

618 (d) Enable the utilities department to ensure compliance with any stormwater
619 applicable permits, and meet water quality requirements and other stormwater
620 discharge criteria which are required by state and federal law; and

621 (e) Provide for the establishment of penalties for violation of this chapter.

622 Section 11. That the Code of the City of Topeka, Kansas, is hereby amended
623 by adding a section, to be numbered 13.40.020, which said section reads as follows:

624 **Referenced standards.**

625 (a) The City of Topeka Property Owner's Guide to Stormwater BMP
626 Maintenance referenced in TMC 13.40 shall be considered an integral part of this
627 chapter without separate adoption. Where provisions of this chapter conflict with the
628 handbook, the chapter shall control. Permissive and advisory provisions in the

handbook shall not be construed as mandatory.

(b) Within the referenced handbook, the director may allow administrative variations to requirements and guidance stated provided such variations do not result in a reduction or elimination of stormwater performance criteria for any stormwater management facility.

Section 12. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.40.030, which said section reads as follows:

Applicability.

This chapter shall apply to all Property Owners who have one or more stormwater management facilities on their property that were designed and constructed or installed as a result of City of Topeka stormwater requirements.

Section 13. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.40.040, which said section reads as follows:

Prohibitions.

The following uses, activities, encroachments, and conditions are prohibited in stormwater management facilities.

(a) Willful alteration or relocation of a facility from its approved design or constructed condition or location as indicated by the stormwater BMP record drawing which is recorded as a covenant on the property, or, in the absence of said drawing, by the approved stormwater management plan, drainage report, or plat for the property, when such alteration or relocation occurs without prior written approval by the director.

(b) Spraying, filling, and dumping of any material or waste, including the land application of bio-solids or animal waste, unless such activity is a result of an emergency.

(c) Storage for commercial or industrial land uses, including but not limited to storage of vehicles, equipment, materials, pesticides, herbicides, fertilizers, or household or commercially-generated wastes.

(d) Disposal of sewage, on-site sewage disposal and treatment systems (septic systems), whether underground or raised, or subsurface discharges from a wastewater treatment plant.

(e) Use as a waste storage area, whether temporary or permanent, or a landfill of any type, including, but not limited to, demolition, permitted and closed-in place landfills, and household garbage pits.

(f) Abandoned, closed or active junkyards or other similar waste fields.

(g) Vehicle trafficways, driveways or temporary parking, unless the stormwater management facility has been designed for the dual purposes of stormwater management and vehicle parking (e.g., permeable pavement).

(h) Storage, whether temporary or permanent, of motorized vehicles or equipment awaiting or undergoing repair, or of such vehicles or equipment that are unmaintained or infrequently used.

(i) Farms, feedlots, confined animal feed operations, animal pastures, concentrated animal lots, dog parks or outdoor animal play/relief areas for animal care facilities, kennels, and commercial/business developments or facilities that provide short-term or long-term care of animals.

(j) Gardens installed solely for the cultivation of plants, fruits, or vegetables that do not meet the design requirements for a bioretention area (rain garden), orchards, crops or greenhouses, whether associated with a farm, commercial business or residence.

(k) Installation of impervious surfaces, except when such surfaces are included in the approved design, or are necessary for a stream crossing or other condition having the approval of the director.

(l) Other land uses or activities deemed by the director to have the potential to:

(1) generate pollutant loadings that may be harmful to the health of the vegetation or soil in the practice or to the health of onsite or downstream water body(s); or

(2) modify the function of the facility as designed and constructed for the management of stormwater to prevent pollution; downstream channel erosion; and/or flooding, unless said modification is authorized in writing by the Director.

Section 14. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.40.050, which said section reads as follows:

Property Owner responsibilities.

(a) The Property Owner has the obligation to, at all times, operate and maintain all stormwater management facilities located on their property in their fully functional condition as designed and constructed. Property Owner responsibilities include, but may not be limited to, the following:

(1) protecting facilities from damage, alterations, and unwarranted encroachments; and

(2) preventing the prohibited conditions identified in TMC 13.40.040; and

(3) maintaining unimpeded access to each facility from a public

roadway for purposes of inspection and maintenance by the Property Owner and his or her agent or contractor and for inspection by the City. A stormwater management easement and an entry access easement may be recorded for this purpose; and

(4) inspecting and maintaining facilities in accordance with the requirements of this chapter and the City of Topeka Property Owner's Guide to Stormwater BMP Maintenance.

(b) For stormwater management facilities designed and constructed after January 1, 2021, the locations, types, designs, and construction of facilities on the property will be shown in property's stormwater BMP record drawing, which is recorded by the Shawnee County Register of Deeds as a covenant running with the land. For facilities designed and constructed prior to January 1, 2021, the location and design or construction of the facilities may be shown in the construction record drawing, drainage report, stormwater management plan, and/or recorded plat. In the event this information cannot be obtained, the intended design and function of the facility shall be ascertained by the director.

(c) The Property Owner shall periodically inspect all stormwater management facilities located on his or her property to identify maintenance needs, determine if the facility protective measures remain effective, check for prohibited conditions, facility damage, unwarranted encroachments and signs of poor function, and begin preparations for necessary routine maintenance and/or repair activities. Inspections shall be performed as follows.

(1) Routine inspections. All stormwater management facilities shall be regularly inspected to evaluate facility function and determine needs for facility

maintenance. Regular inspections must be performed often, such as monthly or when property landscape maintenance is performed and after storm or snow events. Guidance for routine inspection and maintenance of facilities is provided in the City of Topeka Property Owner's Guide to Stormwater BMP Maintenance. Documentation of routine inspections is not required.

(2) Two-year inspections. Comprehensive inspection of all stormwater management facilities shall be performed and documented once every two years, in accordance with the requirements established in the City of Topeka Property Owner's Guide to Stormwater BMP Maintenance. Property Owners shall retain documentation of two-year inspections for no less than six years.

(3) Professional inspection. Once in every six year period, the biennial inspection shall be conducted and documented by either a professional engineer or landscape architect licensed to practice in the State of Kansas.

(d) Property Owners may authorize others to perform maintenance and inspection activities for their stormwater management facilities, however the Property Owner(s) remain responsible for ensuring required activities are performed as necessary to meet the requirements of this chapter.

Section 15. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 13.40.060, which said section reads as follows:

Inspection by the city.

Inspection of stormwater management facilities. Property Owners shall allow the director, or his/her duly authorized contractor or agent, to access to the facility at reasonable times for periodic inspection to determine if the facility is inspected and maintained in conformance with this chapter. The director's inspections may include but

are not limited to: review of inspection documentation; review of maintenance and repair records; in-field testing of soil, materials, or water in the facility; collection of samples of soil, materials, and/or water in the facility; and evaluation of the condition of the facility in comparison to the approved stormwater management plan and/or as-built plan.

Section 16. That section 17.10.020, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

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

“Active channel” means the area of the stream channel that is subject to frequent flows and that includes the portion of the channel below where the floodplain flattens.

“Best management practices (BMPs)” means conservation practices or management measures which control flooding, erosion and soil loss, and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.

“Buffer” means a vegetated area, including trees, shrubs, and herbaceous vegetation, which exists or is established to protect a stream system, lake, or reservoir.

“Development” means:

- (1) The improvement of property for any purpose involving building; or
- (2) The division or subdivision of a tract or parcel of land into two or more parcels; or
- (3) The combining of any two or more lots, tracts, or parcels of property for any purpose; or
- (4) The preparation of land for any of the above purposes; or

(5) The clearing of trees and vegetation and/or excavation or earthwork on a tract or parcel of land.

“GIS-Based Stream Buffer Shapefiles for the City of Topeka” means a shapefile developed using hydraulic modeling results and site-specific characteristics to determine the magnitude of stream setback limits using a process that evaluates the overall risk along the stream, direction of flow, and minimum bank offset. The science-based stream buffer highlights areas where bank failure is more likely to occur and where additional setback measures are needed to protect the integrity of the stream channel. This file shall be used to determine the stream buffer width for the Outer Area.

“Levee” means a manmade structure to control, divert, and contain stormwater runoff and flood flows.

“Native Vegetation” means vegetation comprised of plant species that are indigenous to the area in question.

“Nonpoint source pollution” means pollution which is generated by various land use activities rather than from an identifiable or discrete source and is conveyed to waterways through natural processes such as rainfall, storm runoff, or ground water seepage rather than direct discharge.

~~“One-hundred-year floodplain” means the area of land adjacent to a stream that is subject to inundation during a storm event that has a recurrence interval of 100 years.~~

“Pollution” means any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, livestock, wild animals, birds, fish or other aquatic life.

“Streams” means perennial and intermittent watercourses identified through site

inspection, drainage study, or United States Geological Survey (USGS) maps and further defined and categorized as follows:

(1) "Type I streams" are defined as perennial streams shown as solid blue lines on a United States Geological Survey seven and one-half-minute series topographical map. ~~The total required buffer width is 100 feet on each side perpendicular to the waterway measured from the outer wet edge of the channel during base flows.~~

(2) "Type II streams" are defined as intermittent streams shown as a dashed blue lines on a United States Geological Survey seven and one-half-minute series topographical map. ~~The total required buffer width is 50 feet on each side perpendicular to the waterway measured from the centerline of the channel.~~

(3) "Type III streams" are defined as waterways or dry channels that have a contributing drainage area of ~~50~~40 acres or greater. ~~The total required buffer width is 30 feet on each side perpendicular to the waterway measured from centerline of waterway.~~

"Water pollution hazard" means a land use or activity that causes a relatively high risk of potential water pollution.

"Waterways" means natural or manmade lakes, channels, rivers, streams, and creeks, which store and/or convey stormwater runoff.

"Wetlands" means those areas not influenced by tidal fluctuations which are inundated or saturated by surface or groundwater 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.

Section 17. That section 17.10.040, Plan requirements, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Plan requirements.

(a) A buffer plan approved by the Director of the ~~Public Works Department~~Utilities or designee is required for all development within the buffer zone as defined herein.

(b) The buffer plan shall contain an informative, conceptual, and schematic representation of the proposed development activity by means of maps, graphs, charts, or other written or drawn documents so as to enable an informed decision regarding the proposed development activity.

(c) The buffer plan shall contain the following specific information:

(1) A location or vicinity map to include maximum two-foot contour intervals and scale of no greater than one inch equals 100 feet.

(2) Field delineated streams, springs, seeps, bodies of water, wetlands, forested and open areas, and waterway buffer zones.

~~(3) Limits of the ultimate 100-year floodplain as shown in the most accurate information available as determined by the City's Public Works Department. FEMA maps and stormwater basin studies will be used to determine accuracy.~~
All buffer areas shall be in a Stream Buffer Easement.

(d) A buffer plan shall be submitted in conjunction with the required grading plan for any development, and the buffer ~~should~~zone identifying both the streamside area and outer area shall be clearly delineated on the final grading plan.

(e) Boundary markers ~~will~~shall be installed by the applicant prior to commencing clearing and grading operations. Markers ~~will~~shall be placed at the outside edge of the buffer zone prior to the start of any activity adjacent to the buffer zone. Markers shall be clearly visible and shall be spaced at a maximum of 100 feet. The markers shall be joined by marking tape or fencing.

845 Section 18. That section 17.10.050, Design standards for buffers, of The Code
846 of the City of Topeka, Kansas, is hereby amended to read as follows:

847 **Design standards for buffers.**

848 (a) A buffer for a stream system shall consist of a strip of land extending
849 along both sides of a stream and its adjacent wetlands, ~~floodplains,~~ or slopes. The
850 ~~buffer width shall be adjusted to include contiguous sensitive areas, such as steep~~
851 ~~slopes or erodible soils, where development or disturbance may adversely affect water~~
852 ~~quality, streams, wetlands, or other water bodies.~~

853 (b) The streamside area portion of the buffer shall begin at the edge of the waterway
854 for type I and at the centerline of the channel for type II and type III ~~waterways~~streams.
855 The edge of the waterway is the outer wet edge of the channel during base flow or
856 where the edge of vegetation occurs. The buffer shall be composed of two distinct
857 areas: streamside area and outer area. The outer area widths are defined by the GIS
858 Based Stream Buffer Shapefile for the City of Topeka. The GIS Based Stream Buffer
859 Shapefile is located on the City's Utilities Exploration Map. As an alternative to using
860 the GIS Based Stream Buffer Shapefile for the Outer Area extent, an analysis may be
861 done using the procedure outlined in Section 5605.5- Stream Assessment of the
862 Kansas City Metropolitan Chapter of the American Public Works Association's Standard
863 Specifications and Design Criteria (APWA) Section 5600 *Storm Drainage Systems and*
864 *Facilities* to justify use of a different Outer Area extent. A rating of 12 or below when
865 using the Channel Condition Scoring Matrix is considered acceptable. A rating between
866 12 and 18 may be acceptable if engineering justification is provided to verify adequate
867 protection of the channel. A rating greater than 18 does not support a change from the

GIS Based Stream Buffer. The streamside area widths are defined in the following table. Each area has allowable uses and vegetative targets as follows:

WATERWAY BUFFERS

	<u>STREAMSIDE AREA</u>			<u>OUTER AREA</u>		
	<u>TYPE I</u>	<u>TYPE II</u>	<u>TYPE III</u>	<u>TYPE I</u>	<u>TYPE II</u>	<u>TYPE III</u>
<u>Width</u>	<u>50 feet</u>	<u>25 feet</u>	<u>15 feet</u>	<u>Determined by the GIS-Based Stream Buffer Shapefiles for the City of Topeka.</u>		
<u>Vegetation</u>	<u>Native vegetation.</u>			<u>Native vegetation or managed lawn (type II or III).</u>		
<u>Uses</u>	<u>Steambank stabilization, flood control, utility corridors.</u>			<u>Biking/hiking paths, flood control, detention/retention structure, utility corridors, stormwater BMPs, residential yards, landscape areas.</u>		
	<u>Unpaved foot paths, road crossings.</u>					
<u>Function</u>	<u>Protect the physical and ecological integrity of the stream ecosystem.</u>			<u>Protect key components of the stream and filter and slow velocity of water runoff.</u>		

(c) ~~The specific width for all buffers (i.e., the base width) is relative to the type of waterway being protected with the~~subject to an expansion requirement ~~to expand the buffer depending on~~ wetlands or critical areas.

~~(1) One hundred year floodplain;~~

~~(2) Wetlands or critical areas.~~

~~Type I waterway buffer widths shall be modified if there are steep slopes adjacent to the waterway that drain into the system. Specific adjustments are as follows:~~

Percent Slope	Width—Adjustment to Buffer
--------------------------	---------------------------------------

Percent Slope	Width—Adjustment to Buffer
0 to 14%	No change
15% to 25%	Add 25 feet
Greater than 25%	Add 50 feet

(d) *Water Pollution Hazards.* The following land uses and/or activities are designated as potential water pollution hazards and must be set back from any stream or water body by the distance indicated below:

- (1) Storage and use of hazardous substances: 300 feet;
- (2) Above- or below-ground petroleum storage facilities: 300 feet;
- (3) Drainfields from on-site sewage disposal and treatment system: 200 feet;
- (4) Raised septic systems: 500 feet;
- (5) Solid waste landfills or junkyards: 600 feet;
- (6) Confined animal feedlot operations: 500 feet.

~~(e) The buffer shall be composed of two distinct areas: streamside area and outer area. Each area has allowable uses and vegetative targets as follows:~~

~~WATERWAY BUFFERS~~

	STREAMSIDE AREA			OUTER AREA		
	TYPE I	TYPE II	TYPE III	TYPE I	TYPE II	TYPE III
Width	50 feet	25 feet	15 feet	50 feet	25 feet	15 feet
Vegetation	Native vegetation.			Native vegetation or managed lawn (type II or III).		
Uses	Flood control, utility corridors.			Biking/hiking paths, flood control,		

	STREAMSIDE AREA			OUTER AREA		
	TYPE I	TYPE II	TYPE III	TYPE I	TYPE II	TYPE III
	Foot paths, road crossings.			detention/retention structure, utility corridors, stormwater BMPs, residential yards, landscape areas.		
Function	Protect the physical and ecological integrity of the stream ecosystem.			Protect key components of the stream and filter and slow velocity of water runoff.		

Section 19. That section 17.10.060, Buffer establishment, management, and maintenance, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Buffer establishment, management, and maintenance.

(a) The buffer, including wetlands and floodplains, shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural conditions of these resources. The following practices and activities are prohibited within the buffer, except with written approval by the Director of the ~~Public Works Department~~Utilities or designee.

(1) Clearing of existing vegetation; provided, however, this prohibition shall not prevent a property owner from trimming or cutting overgrown vegetation, removing dead vegetation or replacing vegetation.

(2) Grading, stripping, or other soil-disturbing practices.

(3) Filling or dumping.

(4) Draining the buffer area by ditching, underdrains, or other systems.

(5) Use, storage, or application of pesticides, except for the spot spraying

of noxious weeds or nonnative species consistent with recommendations of the Shawnee County Soil Conservation District.

(6) Housing, grazing, or other maintenance of livestock.

(7) Storage or operation of motorized vehicles, except for maintenance and emergency use.

(b) The following structures, practices, and activities are permitted in the buffer, with specific design or maintenance features, subject to the review of the Director of ~~the Department of Public Works of the City~~ Utilities or designee.

(1) ~~Roads,~~ Pedestrian bridges, foot paths, and utilities.

(2) Stream restoration projects, facilities and activities are permitted within the ~~forest~~ buffer.

(3) Water quality monitoring and stream gauging reading are permitted within the buffer.

(4) Individual trees within the buffer may be removed with prior approval from the ~~Water Pollution Control Division~~ Director of Utilities.

(c) Fences constructed within the buffer zone must be of an open, split rail or wood plank type design. Metal fencing may be added but only as an attachment to an acceptable wood fence design. Added metal fencing may not exceed the height of the wood fence. Screening material of any kind is prohibited. ~~No fencing of any kind may extend into the 100-year floodplain area.~~

(d) Stream Buffer Easement: The owner of the project shall secure all the necessary easements on a permanent basis, including a stream buffer easement for the stream buffer area included in the project design. The stream buffer easement shall provide for access to the buffer at reasonable times for periodic inspection by the city, or

its contractor or agent and shall require the property owner to ensure that the stream buffer is maintained in proper working condition to meet design standards and any other provisions established by this chapter. All easements shall be shown on the recorded plat granted by separate, recorded instrument and shall run with the land until they are lawfully released.

Section 20. That section 17.10.070, Enforcement procedures, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Enforcement procedures.

(a) The Director of the ~~Department of Public Works~~Utilities or designee is authorized and empowered to enforce the requirements of this chapter in accordance with the procedures of this section.

(b) If, upon inspection or investigation, the Director or his/her designee is of the opinion that any person has violated any provision of this chapter, he/she shall with reasonable promptness issue a correction notice to the person. Each such notice shall be in writing and shall describe the nature of the violation, including a reference to the provision within this chapter which has been violated. In addition, the notice shall set a reasonable time for the abatement and correction of the violation. Failure to abate or correct the violation or seek a waiver or variance, as may be applicable, will render the person ineligible for future building permits or for City approvals until such time as the violation is abated, corrected or resolved by waiver or violation as may be applicable.

(c) Any person who violates any provision of this chapter may be liable for any costs or expenses incurred as a result thereof by the City.

Section 21. That section 17.10.080, Waivers - Variances, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Waviers – Variances.

(a) The Director of ~~Public Works~~Utilities or designee may grant a waiver for any of the following:

(1) Those projects or activities serving a public need where no feasible alternative is available.

(2) The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to wetlands and associated aquatic ecosystems have been addressed.

(3) Those developments which have had buffers applied in conformance with previously issued requirements.

(4) Those developments that are redeveloping parcel(s) that are predominately impervious to maintain that impervious area.

(b) Variances for development may be granted if deemed appropriate by the Director of ~~Public Works~~Utilities or designee: Subject to Planning and Development Director approval, additional density elsewhere on the site may be allowed to counterbalance in the loss of developable land due to the requirements of this chapter.

~~(1) The buffer width of a type I, II, or III stream may be reduced and the buffer permitted to become narrower at some points as long as the average width of the buffer meets the minimum requirement. This averaging of the buffer may be used to allow for the presence of an existing structure or to recover a lost lot, as long as the streamside area is not disturbed by the narrowing, and no new structure is built within the 100-year floodplain.~~

~~(2) Subject to Topeka Planning Commission approval, additional density elsewhere on the site may be allowed to counterbalance in the loss of~~

980 ~~developable land due to the requirements of this chapter.~~

981 (c) The applicant shall submit a written request for a waiver or variance to the
982 Director of ~~Public Works~~Utilities or designee. The application shall include specific
983 reasons justifying the variance and any other information necessary to evaluate the
984 proposed variance request. The Director of ~~Public Works~~Utilities may require an
985 alternatives analysis that clearly demonstrates that no other feasible alternatives exist
986 and that minimal impact will occur as a result of the project or development. At a
987 minimum, a variance or waiver request shall include the following information:

988 (1) A site map that includes locations of all streams, wetlands, and
989 other natural features, as determined by field survey;

990 (2) A description of the shape, size, topography, slope, soils,
991 vegetation and other physical characteristics of the property;

992 (3) A detailed site plan that shows the locations of all existing and
993 proposed structures and other impervious cover, the limits of all existing and
994 proposed land disturbance, both inside and outside the buffer area. The exact
995 area of the buffer to be affected shall be accurately and clearly indicated;

996 (4) Documentation of unusual hardship should the buffer be
997 maintained;

998 (5) At least one alternative plan, which does not include a buffer or
999 setback intrusion, or an explanation of why such a site plan is not possible;

1000 (6) A calculation of the total area and length of the proposed intrusion;
1001 and

(7) Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.

(d) In granting a request for a waiver or variance, the Director of ~~Public Works~~Utilities may require site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, wetlands, and floodplains.

Section 22. That section 17.30.040, Findings of fact, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Findings of fact.

(a) Flood Losses Resulting from Periodic Inundation. The special flood hazard areas of the City are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

(b) General Causes of the Flood Losses. Flood losses are caused by the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

(c) Methods Used to Analyze Flood Hazards. The flood insurance study (FIS) that is the basis of this chapter uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

(1) Selection of a base flood that is based upon engineering

calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this chapter is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this chapter. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the current effective Federal Insurance Administrator's FIS, and illustrative materials ~~dated September 29, 2011, as amended,~~documented in the Interior Drainage Area Maps of the Topeka Levee Certification package, and any future revisions thereto.

(2) Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.

(3) Computation of a floodway required to convey this flood without increasing flood heights more than one foot at any point.

(4) Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in flood height.

(5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

Section 23. That section 17.30.070, Lands to which this chapter applies, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Lands to which this chapter applies.

(a) This chapter shall apply to all lands within the jurisdiction of the City of Topeka, Kansas, identified as numbered and unnumbered A Zones, AE, AO, and AH

1050 zones, on ~~the index map dated September 29, 2011, of the fFlood iInsurance rRate~~
1051 ~~mMap (FIRM) panels released on the associated FIRM Index dated September 29,~~
1052 ~~2011, as amended, and any future revisions thereto; and the flood insurance study (FIS)~~
1053 ~~designated AH zones illustrated as interior drainage area floodplains (or levee ponding~~
1054 ~~areas) in the Interior Drainage Area Maps of the Topeka Levee Certification package or~~
1055 ~~any other work map areas designated by the City of Topeka that can be considered~~
1056 ~~best available data.~~ In all areas covered by this chapter, no development shall be
1057 permitted except through the issuance of a floodplain development permit, granted by
1058 the City Council ~~or its duly designated representative~~ Manager or designee under such
1059 safeguards and restrictions as ~~the City Council or its designated representative may~~
1060 ~~reasonably impose~~ are necessary for the promotion and maintenance of the general
1061 welfare, health of the inhabitants of the community, and as specifically noted in Article III
1062 of this chapter.

1063 (b) In addition, this chapter shall also apply to those lands which, based on
1064 the most accurate information available to the Development Services Director, fall within
1065 the ultimate 100-year floodplain.

1066 Section 24. That section 17.30.160, Application, of The Code of the City of
1067 Topeka, Kansas, is hereby amended to read as follows:

1068 **Application.**

1069 To obtain a floodplain development permit, the applicant shall first file an
1070 application in writing on a form furnished for that purpose. Every floodplain development
1071 permit application shall:

1072 (a) Describe the land on which the proposed work is to be done by lot, block
1073 and tract, house and street address, or similar description that will readily identify and

specifically locate the proposed structure or work;

(b) Identify and describe the work to be covered by the floodplain development permit;

(c) Indicate the use or occupancy for which the proposed work is intended;

(d) Indicate the assessed value of the structure and the fair market value of the improvement;

(e) Specify whether development is located in designated flood fringe or floodway;

(f) Specify whether development is located in a designated Zone AH floodplain or levee ponding area as designated by the City of Topeka;

(fg) Identify the existing base flood elevation and the elevation of the proposed development;

(gh) Give such other information as reasonably may be required by the Floodplain Administrator;

(hi) Be accompanied by plans and specifications for proposed construction; and

(ij) Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

Section 25. That section 17.30.180, General standards, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

General standards.

(a) No permit for floodplain development shall be granted for new construction, substantial improvements, and other improvements, including the

1097 placement of manufactured homes, within any numbered or unnumbered A, AE, AO,
1098 and AH zones, unless the conditions of this article are satisfied.

1099 (b) All areas identified as unnumbered A zones on the FIRM are subject to
1100 inundation of the 100-year flood; however, the base flood elevation is not provided.
1101 Development within unnumbered A zones is subject to all provisions of this chapter. If
1102 flood insurance study data is not available, the Floodplain Administrator shall obtain,
1103 review, and reasonably utilize any base flood elevation or floodway data currently
1104 available from Federal, State, or other sources.

1105 (c) Until a floodway is designated, no new construction, substantial
1106 improvements, or other development that exceeds 5,000 square feet of impervious
1107 surface or is part of a larger common plan of development that exceeds 5,000 square
1108 feet of impervious surface, including fill, shall be permitted within any unnumbered or
1109 numbered A zones, AH zones or AE zones on the FIRM, unless it is demonstrated that
1110 the cumulative effect of the proposed development, when combined with all other
1111 existing and anticipated development, will not increase the water surface elevation of
1112 the base flood more than one foot at any point within the community, will not exceed the
1113 lowest adjacent grade of the lowest impacted habitable structure, and will not exceed
1114 the current water surface elevation at the location of a habitable structure currently
1115 impacted by the floodplain.

1116 (d) No new construction, substantial improvements or other development,
1117 including fill, shall be permitted within a designated Zone AH floodplain or levee ponding
1118 area designated by the City of Topeka unless it is demonstrated that all fill in the Zone
1119 AH/ponding area is offset by compensating cut to negate volume losses, with the

compensatory storage being frequency/stage based for the 2yr, 10yr, 25yr, 50yr, and 100yr events.

(e) No new construction, substantial improvements or other development that exceeds 5,000 square feet of impervious surface or is part of a larger common plan of development that exceeds 5,000 square feet of impervious surface, including fill, shall be permitted within a Zone AE floodplain fringe zone on the FIRM, unless it is demonstrated that the water surface elevation will not exceed the lowest adjacent grade of the lowest impacted habitable structure, and will not exceed the current water surface elevation at the location of a habitable structure currently impacted by the floodplain.

(f) No new construction, substantial improvements or other development, including fill, resulting in alternations to a stream that has a drainage area greater than 640 acres (1 square mile) shall be permitted without KDA-DWR approval for the stream change, unless the change is specifically exempt from the KDA-DWR regulations.

(dg) All new construction, subdivision proposals, substantial improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:

(1) Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) Construction with materials resistant to flood damage;

(3) Utilization of methods and practices that minimize flood damages;

(4) All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to

prevent water from entering or accumulating within the components during conditions of flooding;

(5) New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination from them during flooding; and

(6) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:

(i) All such proposals are consistent with the need to minimize flood damage;

(ii) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;

(iii) Adequate drainage is provided so as to reduce exposure to flood hazards; and

(iv) All proposals for development, including proposals for manufactured home parks and subdivisions, of five acres or 50 lots, whichever is lesser, include within such proposals base flood elevation data.

(eh) The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited. Storage of other material or equipment may be

allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

Section 26. That section 17.30.210, Areas of shallow flooding (AO and AH zones), of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Areas of shallow flooding (AO and AH zones).

Located within the areas of special flood hazard as described in TMC 17.30.070 are areas designated as AO and AH zones. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

(a) AO Zones.

(1) All new construction and substantial improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the City's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of any commercial, industrial, or other nonresidential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the City's FIRM (at least two feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that level so that the structure is watertight with walls substantially impermeable to the passage of

water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

(b) AH Zones.

(1) The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in TMC 17.30.180 and TMC 17.30.190.

(2) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

Section 27. That section 17.30.220, Floodway, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Floodway.

Located within areas of special flood hazard established in TMC 17.30.070 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

(a) The City shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot at any point.

(b) The City shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses

performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Documentation shall be provided to the City of Topeka for any permits required by the KDA-DWR and/or FEMA.

(c) If subsection (b) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this article.

(d) In unnumbered A zones, the City shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in TMC 17.30.180(b).

Section 28. That section 18.235.090, Stormwater best management practice credits, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Stormwater best management practice credits.

Credits may be authorized up to 20 percent when stormwater best management practices are incorporated into the landscape plan, subject to the approval of the ~~Water Pollution Control Division, City of Topeka~~ Director of Utilities. Such practices shall adhere to recognized principles of stormwater drainage engineering, ~~and consist of but are not limited to:~~ The list of Best Management Practices (BMPs) available for credits and their potential credit is set forth in the City of Topeka Stormwater BMP Design Handbook.

~~(a) Bioretention systems.~~

~~(b) Open vegetated channels.~~

~~(c) Filter strip.~~

(d) ~~Dry and wet swales.~~

(e) ~~Detention systems.~~

(f) ~~Retention/wetland systems.~~

(g) ~~Stream buffers.~~

~~A point value of credit for stormwater best management practices shall be established by separate resolution of the City of Topeka.~~

Section 29. That original §§ 13.25.090, 13.35.010, 13.35.050, 13.35.060, 17.10.020, 17.10.040 through 17.10.080, 17.30.040, 17.30.070, 17.30.160, 17.30.180, 17.30.210, 17.30.220 and 18.235.090 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 30. This ordinance shall take effect and be in force on January 1, 2021 after its passage, approval and publication in the official City newspaper.

Section 31. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 32. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on October 6, 2020.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk