

**CITY OF SHAWNEE**

**ORDINANCE NO. 3394**

**AN ORDINANCE AMENDING CHAPTER 11.04 STORMWATER MANAGEMENT PROGRAM DEFINITIONS, CHAPTER 11.16 STORMWATER TREATMENT, CHAPTER 11.20 LAND DISTURBANCE ACTIVITIES, CHAPTER 11.24 STORMWATER DETENTION, ADDING A NEW CHAPTER 11.36 REGULATING STREAM CORRIDOR MANAGEMENT, OF THE SHAWNEE MUNICIPAL CODE, AND AMENDING THE PENALTY PROVISIONS OF CHAPTER 11.60, ALL RELATED TO THE MANAGEMENT AND REGULATION OF STORMWATER IN THE CITY**

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SHAWNEE, KANSAS:**

**PARAGRAPH 1.** Chapter 11.04 of the Shawnee Municipal Code is hereby amended to add a new Section 11.04.343 to read as follows:

**11.04.343 Shared Use Path.**

*Shared Use Path* means the same as a recreational trail, bike trail, or other recreational multi-use path when the phrase appears in this Chapter.

**PARAGRAPH 2.** Section 11.04.345 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.04.345 Shawnee Design and Construction Manual.**

*Shawnee Design and Construction Manual* refers to the most current version of the City of Shawnee's Manual of Technical Specifications and Design Criteria for Public Improvement Projects.

The previously existing Section 11.04.345 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 3.** Section 11.04.350 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.04.350 Site.**

*Site* means any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under common ownership on which Land Disturbance activity is undertaken.

The previously existing Section 11.04.350 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 4.** Section 11.04.373 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.04.373 Stormwater Treatment Maintenance Covenant (Maintenance Covenant).**

*Stormwater Treatment Maintenance Covenant (Maintenance Covenant)* means a legally recorded document that acts as a property deed restriction, and that provides for long-term maintenance of a Stormwater Treatment Facility.

The previously existing Section 11.04.373 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 5.** Section 11.16.020 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.16.020 Definitions.**

The terms or phrases used in the Chapter shall have those meanings and definitions as set forth in Chapter 11.04 of this Title, unless from the context a different meaning is intended, or the Code directs that a different definition is to be applied to a provision. Within this Chapter, the term Director shall mean the Director of the City's Community Development Department or the Director's designee.

The previously existing Section 11.16.020 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 6.** Section 11.16.060 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.16.060 Applicability.**

The provisions of this Chapter shall extend and apply to all land within the corporate limits of the City that meet the definition of Development in Chapter 11.04 of this Title, with the following exceptions:

- A. Standard Exceptions: Projects that satisfy any of the following criteria are exempt from the provisions of this Chapter:

1. Land Disturbances of less than one (1) acre that are not part of a common plan for Development that will cumulatively disturb more than one (1) acre.
  2. Expansions and modifications to Developed Property otherwise subject to this Chapter where the proposed increase in Impervious Area is less than five thousand (5,000) square feet.
  3. Land Disturbances for linear utility construction.
  4. Agricultural operations on agriculturally zoned land.
  5. A single-family or two-family dwelling unit that is located on a lot or parcel(s) that is not part of a larger common plan for Development.
  6. Repairs to any Stormwater Drainage System deemed necessary by the Director.
- B. Previously Approved Developments: This Chapter shall not apply, unless superseded by state or federal regulations, to properties meeting any of the following criteria:
1. Any preliminary plat for a commercial subdivision that was approved by the Planning Commission prior to February 1, 2008. Individual lots within exempt commercial subdivisions are subject to the conditions of this Chapter unless they meet the criteria for site plan exemption stated below or are less than one (1) acre in size.
  2. Any preliminary plat for the residential subdivision that was approved by the Planning Commission prior to February 1, 2008, and where:
    - a. At least fifty percent (50%) of the lots shown in the preliminary plat have been final platted and recorded at the Johnson County Register of Deeds prior to February 1, 2009; or,
    - b. The public improvement plans for a final plat that is part of the overall preliminary plat, but has not been recorded at the Johnson County Register of Deeds, have been accepted by the Director prior to February 1, 2009.
    - c. Subsequent final plats for the residential subdivision that do not have accepted plans and do not meet the conditions as stated above are subject to the conditions of this Chapter.
  3. Any site plan that was approved by the Planning Commission prior to February 1, 2008 and a building permit has been obtained and Construction begun prior to January 1, 2011.
  4. Any multifamily planned unit development that was approved by the Planning Commission prior to February 1, 2008.
  5. Any plat or site plan that was granted an extension of time by the Planning Commission prior to January 1, 2010.
- C. City Administered Street Construction: The provisions of this Chapter shall apply to City-administered construction, except that compliance is not required

for City-administered street construction: (1) that would be exempt under the standard exceptions in Section 11.16.060 of this Chapter; (2) that will maintain, enhance, or reconstruct existing roadways, including the intersection improvements, turn lane additions, safety improvements, or new entrances; or (3) when the City Engineer has granted a waiver from stormwater treatment or detention per the Shawnee Design and Construction Manual.

- D. State Rights-of-Way: The City does not assert jurisdiction under this Chapter over any construction work on State of Kansas rights-of-way.

The previously existing Section 11.16.060 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 7.** Section 11.16.080 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.16.080 Site Location and Placement.**

The location of STFs shall be consistent with their function while also conforming to the uses and constraints of the Site. At a minimum, all STFs shall be shown on final Stormwater Treatment Facility Plans (Plans) and in the final Stormwater Treatment Facility Report (Report).

- A. Regional Stormwater Treatment Facilities: Regional STFs shall be shown on the preliminary and final plans. Regional STFs are required to be located in a common tract(s) that will be recorded as part of the final plat for the Development. Provisions shall be made for maintenance of the facilities, documentation of their presence, and establishment of Easements and other rights of access, as set forth in this Chapter.
- B. Local Stormwater Treatment Facilities: Local STFs shall be shown on the preliminary and final plans. Local STFs that serve a Single Lot Development shall be located in an Easement recorded as part of the final plat or recorded via a separate instrument if a final plat is not being recorded as part of the Development. Provisions shall be made for maintenance of the facilities, documentation of their presence, and Easements and rights of access, as set forth in this Chapter.
- C. Single-Family and Two-Family Residential Areas: Regional STFs shall be required for single-family and two-family residential areas and shall be located in a common tract to be owned and maintained by a Homes Association. The Director may allow a limited number of Local STFs on individual residential lots, provided the Applicant demonstrates that substantial provisions are in place to ensure long-term operation, maintenance, and inspection of such STFs without undue burden to the City for tracking or monitoring compliance. Local STFs are required to be placed in an Easement.
- D. Private Facilities in the Public Street Right-of-Way: Privately owned and operated STFs shall be located outside of the public street right-of-way unless

approved by the Governing Body. If approved by the Governing Body, the Applicant shall prepare a right-of-way maintenance agreement that provides for private maintenance responsibility in the public street right-of-way and cause the same to be recorded with the Johnson County Register of Deeds. No construction of an approved STF shall commence prior to the written approval by the Director of the right-of-way maintenance agreement and the recording of the same.

- E. Private Facilities in Private Street Easements: Privately owned and operated STFs shall be located outside of private street easements, unless approved by the Governing Body. If approved by the Governing Body, the Applicant shall prepare a maintenance agreement that provides for private maintenance responsibility of the STF in the private street easement and cause the same to be recorded with the Johnson County Register of Deeds. No construction of an approved STF in a private street easement shall occur prior to the written approval by the Director of the private maintenance agreement and the recording of the same.
- F. Coordination with Utility Easements: STFs shall not be located within utility easements, unless approved in writing by the Director.
- G. Detention Facilities: When Detention Facilities for peak flood control are required under the provisions of Chapter 11.24 of this Title, such Detention Facilities may be co-located with STFs, provided that the combined facilities are designed to meet the requirements of both uses.
- H. Off-Site Facilities: The Director may consider proposals to construct Off-Site Facilities for a Development as long as all provisions of this Chapter are still met and the existing site conditions warrant the use of Off-Site STFs. The Off-Site Facility shall be in place prior to or concurrently with the proposed Development. Long-term operations and maintenance responsibilities for such facilities must be established by legal agreements, approved by the Governing Body and recorded with the Johnson County Register of Deeds.

The previously existing Section 11.16.080 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 8.** Section 11.16.090 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.16.090 Stormwater Treatment Plan and Report Requirements.**

- A. Planning Commission Submittal: No Planning Commission Application shall be accepted by the City unless it includes a preliminary stormwater treatment plan and preliminary stormwater treatment report in accordance with the Shawnee Design and Construction Manual.
- B. Final Plans: The final stormwater treatment facility plans (Plans) are required to be incorporated into the public improvement plans and/or site development

plans for the project and prepared in accordance with the Shawnee Design and Construction Manual. In addition, a Stormwater Treatment Facility Report (Report) is required to be submitted concurrently with the Plans and shall include detailed information for each STF within the Development as required by the Shawnee Design and Construction Manual.

1. The Director shall have the authority to set minimum Plan and Report submittal requirements by written policy or checklist.
  2. Both the Plans and Report require review and acceptance by the Director prior to a building permit and/or public improvement permit being issued for the Development.
  3. Following the construction and certification of the STF, the Landowner can not make any revisions to the accepted Plan and Report without written approval by the Director. The following items are required to make revisions to an approved Plan and Report:
    - a. Revised Plans and Reports must be submitted to the Director for review and written acceptance prior to any changes being made to the existing Plans and Reports previously approved by the Director.
    - b. Revised Plans and Reports must be prepared by a Professional Engineer unless another design individual is first approved in writing by the Director.
- C. Design Certification: Prior to commencing construction of a STF, a Professional Engineer shall submit a certification stating that the Plans, Report, and specifications for constructing required STFs are in conformance with this Chapter and the Shawnee Design and Construction Manual.

The previously existing Section 11.16.090 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 9.** Section 11.16.100 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.16.100 Permit, Plat, and Surety Requirements.**

The STF requirements for residential and nonresidential subdivisions (Subdivision) that utilize Regional STFs vary slightly from Single Lot Developments that utilize Local STFs that serve only that lot.

- A. Permit Requirements: In general, a separate permit is not required to construct the STFs for both subdivision and Single Lot Developments; however, no Person shall receive a building permit(s) and/or a Public Improvement Permit(s) for the Development prior to the written acceptance of the Plans and Report by the Director. A Land Disturbance Permit may be issued prior to the Plans and Report being accepted at the discretion of the Director.

B. Notice on Plat or Title: The final plat and homes or business association deed restrictions shall contain language approved by the Director to provide notice of STF presence and maintenance obligations. Easements shall be provided for each STF within the limits of the final plat to provide access to the City in the event the Property Owner fails to maintain the STF. Access provides the rights for the City to inspect, maintain, repair and certify the STFs. The final plat shall be recorded at the Johnson County Register of Deeds. The notice shall run with the land and failure to provide this notice to any purchaser prior to transferring any interest in the property shall be in violation of this Chapter.

C. Stormwater Treatment Facility Covenant:

1. Prior to November 1, 2021, the City required a Landowner to execute and record with the Johnson County Register of Deeds the City's standard form entitled "Declaration of Stormwater Treatment Facility Maintenance Restrictions and Covenants" (Covenant) before issuing a building permit and/or public improvement permit(s) being issued. Such Covenants remain valid and may be amended only with the written consent of the Director.
2. The Covenant covers maintenance responsibilities and identifies the City's rights to assess costs on the property in the event the Landowner and responsible party fail or are unable to perform any of the obligations of the Stormwater Treatment Facility Maintenance Agreement or Final Stormwater Treatment Report.
3. The Covenant is binding to all subsequent Landowners.

D. Stormwater Treatment Facility Maintenance Agreement:

1. Prior to November 1, 2021 the City required a Landowner to use the City's standard form entitled "Stormwater Treatment Facility Maintenance Agreement" (Agreement). Such Agreements remain valid and may be amended only with, the written consent of the Director.
2. The original copy will be kept on file at the City.
3. The Agreement covers maintenance responsibilities and identifies the City's right to assess costs on the property in the event the Landowner and responsible party fail or are unable to perform any of the obligations of the Report or provisions of this Chapter.
4. The Agreement is binding to all subsequent Landowners.

E. Stormwater Treatment Maintenance Covenant:

1. On and after November 1, 2021, a Landowner is required to execute and record with the Johnson County Register of Deeds the City's standard form entitled "Declaration of Stormwater Treatment Maintenance Covenant" (Maintenance Covenant) prior to the building permit and/or public improvement permit(s) being issued. If the Landowner desired to make any additions or amendments to the Covenant, the written consent of the Director is required.

2. The Maintenance Covenant covers maintenance responsibilities and identifies the City's rights to assess costs on the property in the event the Landowner and responsible party fail or are unable to perform any of the obligations of the Maintenance Covenant or Final Stormwater Treatment Report.
  3. The Maintenance Covenant is binding to all subsequent Landowners.
  4. For subdivisions, the Maintenance Covenant is required to be executed by the Landowner and recorded at the Johnson County Register of Deeds concurrently with the final plat. The City will oversee the recording.
  5. For Single Lot Developments, if the Development has not previously been platted, then the Maintenance Covenant is required to be executed by the Landowner and recorded at the Johnson County Register of Deeds concurrently with the final plat. The City will oversee the recording. If the Development has previously been platted, then the Landowner is responsible for recording the Maintenance Covenant at the Johnson County Register of Deeds and returning the original copy to the City.
- F. Performance Surety Requirements: The Director shall require the submittal of a performance surety in the form of an irrevocable letter of credit, cash deposit, or other sufficient surety as approved by the Director in writing. In addition to the performance surety, the Owner is required to execute with the City the document entitled "Stormwater Treatment Developer's Agreement." If a letter of credit is provided, it shall be on the form as prescribed by the Director. The amount of the performance surety shall be one hundred twenty-five percent (125%) of the total construction cost of the STFs estimated by a Professional Engineer and accepted in writing by the Director.
1. If a STF only serves a single lot and a building permit is associated with that lot, then a performance surety may be waived by the Director provided all STFs are constructed, as-built drawings have been prepared and accepted by the City, and the STF have been certified by a Professional Engineer prior to the issuance of the Certificate of Occupancy.
  2. When seasonal or environmental conditions cause a delay in constructing the STFs, the Director may approve the certificate of occupancy provided a performance surety is posted in accordance with Subsection 11.16.100D of this Chapter.
- G. Release of Performance Surety: The performance surety will be released only when all of the following conditions have been met:
1. At least ninety percent (90%) of the land area served by the STFs has permanent stabilization in place.
  2. All of the STFs covered by the surety have been constructed and certified in accordance with this Chapter and the As-Built Plan(s) have been reviewed and accepted in writing by the Director.

- H. Timing of Stormwater Treatment Facility Construction: STFs shall be constructed as early as feasible during the development process. However, since some commonly used STFs are sensitive to construction generated Sediment when Upstream Tributary Areas are under construction, the following provisions are allowable for timing of such STF construction.
1. For STFs serving a Single Lot Development, the STFs are to be constructed following the completion of the other site and building improvements. However, upon approval of the Director in writing, the STFs may be constructed concurrently with the other site and building improvements provided adequate measures are maintained throughout construction to prevent contamination by silt, Erosion, or other construction related activity.
  2. Regional and Local STFs shall be final graded and permanent underdrains and vegetation installed only after ninety percent (90%) of the land area served by the STF has achieved permanent stabilization, unless the Director approves in writing a shortened schedule. Additionally, STFs must be installed and certified within six (6) months of permanent stabilization of the entire land area served by the STF.
- I. Failure to Construct a Required Stormwater Treatment Facility: When construction of a STF is delayed beyond the limits as provided in this Chapter, the Director may utilize any or all of the following remediation authorized by Chapter 11.60 of this Title including, but not limited to, the following:
1. Draw upon performance surety funds as necessary to construct the STFs. In the event the performance surety funds are not adequate to cover all the costs associated with the construction of said facilities, the Director may assess the Landowner for any additional costs.
  2. Withhold issuance of building permits and public improvement permits for properties proposed to be served by such STF.
  3. Withhold issuance of Certificate of Occupancy for buildings or final acceptance of public improvements for permitted work that is proposed to be served by such STF.
  4. Issue Stop Work Orders for permitted work for any or all property that is proposed to be served by such STF.

The previously existing Section 11.16.100 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 10.** Section 11.16.150 of the Shawnee Municipal Code is hereby amended to read as follows:

### **11.16.150 Facility Maintenance.**

Maintenance of a STF shall include, but not be limited to, clearing and removing debris, cutting vegetation, repairing eroded areas, removing accumulated silt, maintaining structural facilities, and replacing dead vegetation. Such repairs or restoration and maintenance shall be in accordance with the Maintenance Covenant and the Plans and Report accepted by the Director and any amendments thereto. STF maintenance work shall be the joint and several responsibility of the following:

- A. The Landowner of the property upon which the STF is located; and,
- B. Persons who are obligated or directed to construct or maintain the STF through agreement, or as a condition of preliminary or final development plan approval, site plan approval, plat approval, or permit approval.

A maintenance schedule shall be developed for all STFs and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included in the Report, which is accepted by the Director, and shall be followed by the Landowner and responsible parties.

The maintenance obligations provided by this Chapter may be enforced jointly and severally against those persons identified in this Section as responsible for compliance, through the assessment of restitution and reimbursement of all costs of any abatement, including administrative, materials, and personnel, as provided by this Title 11. If the assessment for such costs is unpaid after sixty (60) days from the date of billing, the City Clerk, at the time of certifying City taxes, shall certify such costs to the County Clerk to be collected by the County Treasurer and paid to the City and collected in the same manner as City taxes are collected and paid, with instructions to extend the same on the tax roll of the County against the property upon which the STF is located; the property of the development for which the STF was required to be constructed and maintained as directed by the Director or as a condition of plan or permit approval; or the property of the development for which the STF was required to be constructed and maintained through agreement, or as a condition of preliminary or final development plan approval, site plan approval, or plat approval.

Nothing in this Section shall limit the City's right to pursue collection both by levying a special assessment and in any other manner authorized by this Title 11.

The previously existing Section 11.16.150 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 11.** Section 11.16.160 of the Shawnee Municipal Code is hereby amended to read as follows:

### **11.16.160 Annual Certification.**

On or before the first day of October of each year, the Landowner and person responsible for maintaining each STF shall furnish certification by a Professional

Engineer or other individual approved in writing by the Director of the City's Public Works Department. The certification shall be in compliance with the Shawnee Design and Construction Manual and Report and requires that the scope and timing of the prescribed maintenance is being completed in accordance with the Report.

The annual certification shall document the condition of the STF. If the STF is not functioning as designed, a report shall be prepared of items that require corrective action and submitted to the City. The report shall document each item including, but not limited to, the need for removal of silt, litter and other debris, grass cutting, removal of undesirable vegetation, replacement of landscape and vegetation and replacement and/or repair of structure items including underdrains, overflow structures, and storm drainage pipes. The report shall include a time line to address any maintenance issues found. Any maintenance needs found shall be addressed in a timely manner, as determined by the Director of the City's Public Works Department, and the inspection and maintenance requirements may be increased as deemed necessary to ensure proper functioning of the STF.

- A. City Inspection of Stormwater Treatment Facilities: The City conducts various types of inspections: Routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage areas identified as sources of higher than typical Pollutants, Sediment, or other contaminants; inspections of businesses or industries of a type associated with higher than usual discharges of Pollutants or other contaminants, or associated with discharges of a type that are more likely than the typical discharge to cause violations of a NPDES permit or other federal or state water quality or Sediment control standards; and joint inspections with other agencies inspecting under environmental or safety laws. Such inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, water bodies, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.
- B. Right of Entry for Inspection: When a STF is installed on private property, or when a new connection is made between private property and a Stormwater Drainage System, the Landowner shall grant to the City in a manner and form acceptable to the Director, the right to enter property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when there exists a reasonable basis to believe that a violation of this Chapter is occurring or has occurred and to enter a property when necessary for abatement of a public nuisance or correction of a violation of this Chapter.
- C. Records of Installation and Maintenance Activities: The Landowner or party responsible for the operation and maintenance of STFs shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the Director of the City's Public Works Department during inspection of the facility and at other reasonable times upon request.

- D. **Failure to Maintain Practices:** If the Landowner and responsible party fail or refuse to meet the requirements of this Chapter or the Covenant, Agreement and/or Report the Director of the City's Public Works Department is authorized to exercise the enforcement measures identified in Section 11.16.100(I) of this Chapter, Chapter 11.60 of this Title, and/or those set forth in the Agreement.

The previously existing Section 11.16.160 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 12.** Section 11.16.170 of the Shawnee Municipal Code is hereby amended to read as follows:

**11.16.170 Disturbance of Constructed Facilities.**

It shall be unlawful for any Person to obstruct, damage, or materially interfere with the use or operation of a STF required by this Chapter, unless such STF is fully restored and repaired, and such restoration or repairs have been certified in writing to the Director by a Professional Engineer, within forty-eight (48) hours of the obstruction, damage, or interference.

The previously existing Section 11.16.170 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 13.** Chapter 11.20 of the Shawnee Municipal Code is hereby amended to read as follows:

***CHAPTER 11.20 LAND DISTURBANCE ACTIVITIES***

**Sections**

**11.20.010 Purpose.**

The Congress of the United States has amended the Clean Water Act of 1972 to reduce Pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter "NPDES") requirements to regulate stormwater and urban runoff discharge from Land Disturbance and Construction activities, into the City's Stormwater Drainage Systems.

The City of Shawnee is subject to the NPDES requirements of federal law as an operator of a Small Municipal Separate Storm Sewer System, and the City is therefore obligated by federal law to develop, implement, and enforce minimum Erosion and

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Sediment control standards in compliance with the City's Kansas Water Pollution Control General MS4 Permit.

The purpose of this Chapter is to implement and provide for enforcement of a program to regulate Land Disturbance and Construction activities related to grading and to control Erosion and Sediment resulting from these activities.

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### **11.20.020 Definitions.**

As used in this Chapter, unless from the context a different meaning is intended, or the Code directs that a different definition is to be applied to a provision, the terms or phrases used herein shall have those meanings and definitions as set forth in Chapter 11.04 of this Code.

### **11.20.030 Land Disturbance Activity.**

- A. No Person shall authorize or maintain a Land Disturbance activity or Construction Site that fails to comply with the Shawnee Design and Construction Manual and the requirements of this Chapter.
- B. No Person shall authorize or maintain a Land Disturbance activity or a Site of Construction that fails to provide and implement Erosion and Sediment Control Best Management Practices to the Maximum Extent Practicable to prevent the discharge of Sediment, Construction materials, concrete truck washout, fuel or other Pollutants beyond the project Construction limits, adjacent staging, storage or parking areas and/or property boundaries or into the City's Stormwater Drainage System, rights-of-way, drainage easements, alleys, or other property of the City.
- C. No Person shall authorize or maintain a Land Disturbance activity or Site of Construction without a Land Disturbance Permit and/or a Site -specific Erosion and Sediment Control Plan approved by the Director prior to any Construction or Land Disturbance activity as required by this Chapter.
- D. No Person shall fail to immediately take all action necessary to completely abate any violation of this Chapter including, but not limited to, the establishment or restoration of Erosion and Sediment Control BMPs as required by this Chapter and remedial action to clean and/or remove Sediment and other Pollutants in violation of Title 11.

### **11.20.040 Land Disturbance Permit.**

The Shawnee Design and Construction Manual outlines the requirements for a Land Disturbance Permit and stipulates when a Land Disturbance Permit is required based on the type of Land Disturbance activity. A Land Disturbance Permit acknowledges and conveys to the Director or their designee the right to enter upon property described in the Land Disturbance Permit, as necessary to enforce and carryout the provisions of this Chapter.

### **11.20.050 Fees.**

- A. Prior to the issuance of Land Disturbance Permit each Applicant shall pay to the City a fee as approved by the Governing Body and listed in the latest City of Shawnee Policy Statement Code (PS-56), as amended. Fees paid for a Land Disturbance Permit, which is subsequently revoked by the Director, are not refundable. A Person operating in compliance with the regulations of this Chapter shall not be charged a permit fee when obtaining a Land Disturbance Permit for

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Construction or re-Construction of City owned and financed capital improvement projects.

- B. Any Person who permits, authorizes, or maintains a Land Disturbance activity without first obtaining a valid Land Disturbance Permit required by this Chapter, shall pay additional permit fees as approved by the Governing Body and listed in the latest City of Shawnee Policy Statement Code (PS-56).
- C. The Applicant shall establish and maintain throughout the permit period an escrow account, issue a letter of credit, or a surety bond in the City's name, as a sufficient surety for the City to requirements of this Chapter. The Director may determine that a specific type of surety instrument be required of an Applicant based on the project proposed and past performance of the Applicant. The amount of the required surety shall be approved by the Governing Body and listed in the latest City of Shawnee Policy Statement Code (PS-56). The amount of the letter of credit or escrow account may be reduced with the approval, in writing, of the Director by amending the letter of credit or escrow account.

#### **11.20.060 Additional Persons Responsible for Compliance.**

The Person responsible for compliance with this Chapter shall include, jointly and severally:

- A. The Landowner and/or occupant of the property upon which a Land Disturbance or Construction activity takes place. When a Land Disturbance Permit and/or Site Development Permit issued, the Landowner is responsible for Land Disturbance activities from permit issuance to closure, unless the City approves a transfer of responsibility to a new Landowner when land is sold.
- B. The Person who submits or to whom a Land Disturbance Permit is issued that relates to the property upon which a Land Disturbance activity or Construction activity takes place.
- C. The Person who submits, or requests a waiver of, the Site specific Erosion and Sediment Control Plan that relates to the property upon which a Land Disturbance activity or Construction activity takes place.
- D. Any Person, who engages in, permits, manages, or participates in a Land Disturbance activity or Construction activity.
- E. Construction Site Operators.

#### **11.20.070 Compliance and Use.**

The property described in a Land Disturbance Permit shall be maintained at all times in compliance with all provisions of the Shawnee Municipal Code, state and federal laws, Shawnee Design and Construction Manual, applicable laws or regulations, the conditions or requirements for approval of a Site plan, plat, or special use permit, including required drainage, grade or elevation plans. The property described in a Land Disturbance Permit shall be maintained at all times in compliance with the provisions of any application, plans or specifications upon which such permit was issued.

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The approval of the Erosion and Sediment Control Plan and the Stormwater Pollution Prevention Plan (SWPPP) is contingent upon compliance with the requirements stated in this Chapter, and shall comply with the Shawnee Design and Construction Manual to the Maximum Extent Practicable in order to prevent the escape of Sediment and other Pollutants from the Site.

The failure to comply with the requirements stated in this Chapter shall be unlawful and shall constitute a violation of this Chapter.

The provisions of this Chapter shall be in effect on January 1, 2008. A LDP shall not be required for any Land Disturbance activities that have a valid City permit issued prior to January 1, 2008.

#### **11.20.080 Enforcement of Code Provisions.**

Any Person, that fails to provide and implement Erosion and Sediment Control Best Management Practices to the Maximum Extent Practicable as required by this Chapter, shall be ordered by the Director, to take remedial action on said land to prevent the occurrence or recurrence of a violation of this Chapter. Remedial action shall include, but not be limited to, conformance to the requirements of this Chapter and the Shawnee Design and Construction Manual. When failed or absent Erosion control has resulted in mud, silt, gravel, dust or other debris entering into the public rights-of-way, drainage Easements, alleys, or other property of the City, the remedial action required also shall include the restoration of the area disturbed to a neat and presentable condition and removal of any debris or other Pollutants.

Whenever the Director, finds a violation of this Chapter, the Director shall order the Landowner of the land upon which a Land Disturbance activity takes place, the Construction Site Operator, and/or the Permit Holder to take action within three (3) days after service of such order to comply with the provisions of this Chapter. The order may direct the removal of any dirt, debris or mud that has been deposited in the rights-of-way, drainage easements, alleys, or other properties owned by the City, within four (4) hours after service of such notice. Notice may be given in person, by posting at the Site, by telephone call, or by email contacts as provided in the Land Disturbance Permit application.

In addition to the enforcement provisions of Chapter 11.60 of the Shawnee Municipal Code, the Director may issue a Stop Work Order if the Director determines that work authorized by a Land Disturbance Permit is in violation of this Chapter or the Erosion and Sediment Control Plan, including required drainage, grade or elevation plans, or not in compliance with the provisions of the application, plans or specifications, or conditions upon which a permit was issued, including but not limited to the following:

- A. Applicant fails to submit reports in accordance with the Shawnee Design and Construction Manual;
- B. Inspection by the Director reveals the Site defined by the Land Disturbance Permit is not in substantial compliance with the Erosion and Sediment Control Plan, as determined by the Director;

- 
- C. Failure to comply with a written order from the Director to bring the Site into compliance with the Land Disturbance Permit, correct a violation of this Chapter, or restore a disturbed area within the time limits defined by the Director; or
  - D. Applicant fails to pay any fee.

In the event a Stop Work Order is issued by the Director, the Director shall order and direct the Landowner of the property, or the Landowner's agent, or any party in possession of such property described in the Land Disturbance Permit application, or the Construction Site Operator performing the work, or any work authorized by a City Permit in the Development to immediately suspend work within the area defined in the Land Disturbance Permit.

Such Stop Work Order shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a Person to whom it is directed either by personal delivery, by email, by posting the area defined by the Land Disturbance Permit and/or mailing a copy of the same to the address identified within the Land Disturbance Permit application for the Permit Holder, Landowner, and/or any party in possession of such property. In the event the Director issues a Stop Work Order, all Persons shall cease all work on the Development Site, except work necessary to remedy the cause of the suspension.

It shall be unlawful for a Land Disturbance Permit Applicant, Construction Site Operator, party in possession of property subject to a Stop Work Order, or Landowner subject to a Stop Work Order, to allow, consent, or permit any Person to perform work described within the Land Disturbance Permit or any other work requiring a City permit, upon property subject to a Stop Work Order.

Upon notice by the Director as required herein for a Stop Work Order, the Director may revoke the Land Disturbance Permit if the Applicant fails or refuses to remedy the cause of the suspension set forth in a Stop Work Order.

In the event the Land Disturbance Permit is revoked by the Director, no Person shall permit or continue any work described in the Land Disturbance Permit without first obtaining a new Land Disturbance Permit and paying a new permit fee as required by this Chapter.

The previously existing Chapter 11.20 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 14.** Chapter 11.24 of the Shawnee Municipal Code is hereby amended to read as follows:

***CHAPTER 11.24 STORMWATER DETENTION***

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#### **11.24.010 Purpose.**

To promote the public health, safety, and general welfare of the citizens of the City of Shawnee, this chapter is enacted for the general purpose of assuring the proper balance between man's use of land and the preservation of a safe and beneficial environment. More specifically, these regulations, as amended from time to time, are intended to reduce property damage and to minimize the hazards of personal injury and loss of life due to flooding caused by stormwater runoff.

#### **11.24.020 Definitions.**

The terms or phrases used in the Chapter shall have those meanings and definitions as set forth in Chapter 11.04 of this Title, unless from the context a different meaning is intended, or the Code directs that a different definition is to be applied to a provision.

#### **11.24.030 Interpretations.**

In their interpretation and application, the provisions of this chapter are held to be the minimum requirements for the promotion of the public health, safety and general welfare. Whenever these regulations are at variance with the requirements of any lawfully-adopted statute, ordinance, resolution, regulation, rule, or other provision of law, the most restrictive or that imposing the higher standard shall govern.

#### **11.24.040 Relationship to Other Laws.**

These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the City, except as shall be expressly provided for in these regulations.

#### **11.24.050 Disclaimer of Liability.**

The regulations set forth in this chapter establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of these requirements shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any stormwater detention facility or use of land. Nor shall the approval of a preliminary or final stormwater drainage study or the issuance of a public improvement permit imply that the land uses permitted will be free from damages caused by stormwater runoff. The degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records, engineering and scientific methods of study. Larger storms may occur or stormwater runoff heights may be increased by manmade or natural causes. These regulations therefore shall not create liability on the part of the City or any officer or employee with respect to any legislative or administrative decision lawfully made hereunder.

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#### **11.24.060 Applicability.**

Stormwater detention facilities shall be constructed with all proposed Developments that result in an increase in peak discharge from the site whenever downstream flooding of a building occurs in a 1% or more frequent storm, or whenever streets are subjected to flooding in excess of the minimum Standards established in the Shawnee Design and Construction Manual, except that detention is not required under any of the following circumstances:

- A. When such flooding occurs within the Special Flood Hazard Area, as defined in Section 11.32 and the watershed is greater than 5000 acres.
- B. If the project does not increase impervious area
- C. The Development of one (1) single-family or two-family residential lot of one-fourth (1/4) acre or less and not part of a larger Development shall be exempt from the provisions of this Chapter.
- D. Problems are identified in a watershed that had not previously required a detention study, and if the remaining increase in flooding caused by the cumulative remaining development in the watershed is less than 0.05 feet for buildings or 0.2 feet for roadway flooding, or if the increase in peak flow rate from the cumulative remaining development in a basin is less than 0.5%.
- E. If the City Engineer determines that detention would be ineffective to prevent flooding or would aggravate existing flooding conditions.
- F. When the City Engineer determines that anticipated future problems can be solved by alternate storm drainage improvements constructed by the Developer or when such downstream problems are due to unique characteristics of downstream building(s) that could be corrected at a reasonable cost and effort by their Owner(s).
- G. Flooding of Structures, for the purpose of this Section, shall be defined as when the structure's lowest adjacent grade is less than one (1) foot above the energy grade line of the 1% storm for fully developed conditions upstream and the property owner is unable to fill adjacent to the Structure to meet this criteria.

#### **11.24.070 Fee in Lieu.**

When it can be shown through a stormwater drainage study prepared by a Professional Engineer that the existing Storm Drainage system downstream of the Development is adequate and Stormwater Detention is not required, or if Stormwater Detention is not required due to the exemptions provided above, a fee shall be paid in lieu of providing Stormwater Detention. The fee rates are based on a per lot basis for single-family and two-family residential lots or on an amount per additional impervious acre or fraction thereof for all other Developments. The fee rates shall be approved by the Governing Body and listed in the latest City of Shawnee Policy Statement Code (PS-56), as amended. The fee rates are intended to be reviewed annually.

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#### **11.24.080 Shawnee Design and Construction Manual.**

All Stormwater Detention Facilities required or constructed within the City shall be designed and constructed in accordance with the most recent Standards set forth in the Shawnee Design and Construction Manual.

#### **11.24.090 Submittal of Studies, Plans, and Specifications.**

Any Developer proposing to construct a Stormwater Detention Facility within the City shall apply to the Director for approval of the location, dimensions, design and construction methods, and materials of the facility as set forth in a stormwater drainage study. The written study shall contain such information including maps and diagrams, design data and calculations, plans and detailed drawings, and specifications prepared in accordance with the Shawnee Design and Construction Manual, unless designated otherwise by the Director. Prior to commencing construction of a proposed stormwater detention facility, the Director shall review and approve the submitted stormwater detention study, including the plans and specifications for constructing such facility. Review shall be completed and the plans approved before any footing and foundation permit or building permit can be issued for the Development.

#### **11.24.110 Inspections.**

Regulated inspections of the Stormwater Detention Facility shall be the responsibility of the certifying Professional Engineer, or other qualified professional who has been approved by the Director in writing. Inspection results shall be provided to the City. For certain types and locations of Stormwater Detention Facilities, additional or parallel inspections by City staff may be required at the discretion of the Director.

The City may require the Landowner to retain a third party inspector, if at the Director's discretion, the complexity of the Stormwater Detention Facility, inexperience by the Landowner's contractor and/or harsh site conditions warrant the need for full-time third party inspection staff.

The Director may cause any work completed without proper notification or inspection to be dismantled and inspected to the satisfaction of the Director. Upon completion of the construction, the Director shall make a final inspection of the Stormwater Detention Facility to determine if it was constructed in accordance with the accepted plans and specifications. Upon completion of a final inspection, the Director shall either issue a written notice of approval or issue a list of corrections required before the construction of the Stormwater Detention Facility can be accepted.

#### **11.24.120 As-Built Plans and Certification.**

Before the Director issues a written notice of acceptance, the Landowner shall submit to the Director an As-Built Plan showing in detail all construction changes from the accepted plans, and furnish certification by a Professional Engineer to the Director that the materials and construction of the Stormwater Detention Facility fully complies with the Plans, Report, specifications and the provisions and intent of this Chapter and the Shawnee Design and Construction Manual, and that the Stormwater Detention Facility is fully functional.

Prior to the final acceptance of public improvements and release of building permits in a commercial or residential subdivision or a Certificate of Occupancy for a building served by the stormwater detention facility, the Director must receive and accept the As-Built Plans and certification.

#### **11.24.130 Facility Maintenance.**

Maintenance of a Stormwater Detention Facility shall include, but not be limited to, clearing and removing debris, cutting vegetation, repairing eroded areas, removing accumulated silt, maintaining structural facilities and be according to written policy, checklist or other guidance approved by the Director; and shall be the joint and several responsibility of the following:

- A. The Landowner of the property upon which the Stormwater Detention Facility is located; and,
- B. Persons who are obligated or directed to construct or maintain the Stormwater Detention Facility through agreement, or as a condition of preliminary or final plan development plan approval, site plan approval, plat approval, or permit approval.

The maintenance obligations provided by this Chapter may be enforced jointly and severally against those persons identified in this Section through the assessment of restitution and reimbursement of all costs of any abatement, including administrative, materials, and personnel, as provided by this Title 11. If the assessment for such costs is unpaid after sixty (60) days from the date of billing, the City Clerk, at the time of certifying City taxes, shall certify such costs to the County Clerk to be collected by the County Treasurer and paid to the City and collected in the same manner as City taxes are collected and paid, with instructions to extend the same on the tax roll of the County against the property upon which the Stormwater Detention Facility is located, the property of the development for which the Stormwater Detention Facility was required to be constructed and maintained as directed by the Director or as a condition of plan or permit approval; or the property of the development for which the Stormwater Detention Facility was required to be constructed and maintained through agreement, or as a condition of preliminary or final plan development plan approval, site plan approval, or plat approval.

Nothing in this Section shall limit the City's right to pursue collection both by levying a special assessment and in any other manner authorized by this Title 11.

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### **11.24.140 Certifications.**

Those Persons identified by Section 11.24.130 of this Chapter as responsible for the maintenance of a Stormwater Detention Facility shall be jointly and severally responsible for the timely preparation and delivery of the following certifications for such Stormwater Detention Facility:

- A. Annual Inspection: On or before the first day of October a maintenance inspectionshall be furnished to the Director for approval. The maintenance inspectionshall be according to written policy, checklist, or other guidance approved by the Director.
- B. Third Year Certification: Every three (3) years on or before the first day of October a certification shall be provided by a Professional Engineer, to the Director, that the facility has full storage capacity and all inlet and outlet structures are fully functional in accordance with the approved plans and specifications and as-built as required for Development or as determined by the Director. If the Detention Facility is not functioning as designed, a report shall be prepared of items that require corrective action. The report shall include a time line to address any maintenance issues found and shall be furnished to the Director for review and approval.

The previously existing Chapter 11.24 of the Shawnee Municipal Code is hereby repealed.

**PARAGRAPH 15.** Title 11 of the Shawnee Municipal Code is hereby amended to add a new Chapter 11.36 Stream Corridor Management, to read as follows:

### ***CHAPTER 11.36 STREAM CORRIDOR MANAGEMENT***

#### **11.36.010 Purpose.**

- A. This Chapter is created to establish acceptable minimum requirements to preserve and protect stream corridors and other valuable aquatic riparian resources within the City.
- B. The Governing Body finds that stream corridors provide multiple benefits to the citizens of Shawnee, benefits which include (a) preservation of habitat for plants and animals; (b) protection of water quality and base flow potential through infiltration, filtration, runoff velocity control and sediment retention; (c) stabilization of stream banks thus minimizing bank erosion, stream migration and property damage due to stream bank instability; (d) temporary storage and velocity reduction of flood waters; (e) recreational and educational opportunities; (f) beautification and aesthetic enhancement of the City; (g) effective visual and auditory screening between adjoining land uses; and (h) enhancing property value.
- C. Further, the Governing Body finds that proper management of stream corridors will continue to enhance the quality of life for the citizens of Shawnee and that conservation and preservation of stream corridors is necessary to protect the public health, safety and welfare.

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D. Further, the Governing Body finds that regulation of stream corridors by establishing acceptable minimum standards is an important component of the City's overall storm water management strategy and that such regulation is consistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System, and other federal, state, and local requirements for water quality and environmental preservation.

E. Further, the Governing Body finds that natural channels migrate in response to a variety of factors, including changes in upstream and downstream land uses, and property owners must consider the potential for migration when locating facilities.

#### **11.36.020 Designation of Stream Corridor.**

Refer to the Shawnee Design and Construction Manual for stream designation and design requirements. Additional restrictions to activities within the stream corridor shall be applied in accordance with the Floodplain Management Chapter *11.32 Floodplain Management*.

#### **11.36.030 Maintenance of Stream Corridor.**

A. Allowed maintenance (as approved and specified in the Maintenance Agreement):

1. Removal of dead trees/brush and trash.
2. Removal of debris that could cause flooding.
3. Selective tree trimming or tree removal to mitigate safety hazards or that could cause flooding.
4. Selective (spot) chemical spraying for noxious weeds.
5. Cutting or mowing of non-woody vegetation or other management practices shown to enhance natural conditions when completed as part of an approved Stream Corridor Maintenance Agreement, or when approved by the Director.
6. Maintenance of all City-approved improvements.
7. Maintenance of City-approved bank stabilization measures.

B. Prohibited Maintenance:

1. Cutting or mowing of non-woody vegetation outside of approved recreational use areas, unless such mowing is part of an approved Stream Corridor Maintenance Agreement, or is approved by the Director.
2. Non-selective chemical spraying.

C. Required Maintenance:

Maintenance of stream corridors shall comply with all other applicable City property maintenance codes, except Title 15 shall take precedence over other City codes.

D. Public Recreational Uses:

Any public recreational use and all related appurtenant work and infrastructure as allowed by the Shawnee Design and Construction Manual, shall be

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maintained and constructed at the sole expense of the City and not the Property Owner. Additionally, with the platting of a Stream Corridor, the Property Owner conveys the right to the City to allow the public use, construction, and maintenance of recreational facilities within the limits of the Stream Corridor. This includes the construction of a Shared Use Path for recreational enjoyment. The Shawnee Design and Construction manual defines the recreational uses that are allowed in a Stream Corridor.

E. Stream Corridor Maintenance Agreement

When a stream corridor is to be dedicated, a Stream Corridor Maintenance Agreement shall be submitted with all final plan and final plat applications; be approved by the City prior to the City approving final plans or final plats; and then recorded with the Johnson County Records and Tax Administration concurrent or prior to recording the final plat.

At a minimum, the Maintenance Agreement shall:

1. Identify the responsible party for maintaining the stream corridor, or segment thereof, the boundaries of which are identified as an attachment to the Maintenance Agreement;
2. Establish the minimum frequency and levels of maintenance to be done;
3. Establish the frequency of inspection;
4. Identify resources available to provide maintenance;
5. Identify prohibited practices and Home Association's enforcement process for restoration;
6. Identify City's rights in the event that the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement;
7. Clarify how modifications or additions can be made to the Maintenance Agreement; and
8. Be filed as a covenant to the recorded deeds of all lots to enforce the imposition of any special tax assessment that may be necessary to maintain the stream corridor if the responsible party fails or is unable to perform any of the obligations in the Maintenance Agreement.

F. Plat Notice

All subdivision final plats with a Stream Corridor shall include a notice on the face of the plat regarding the Stream Corridor Maintenance Agreement. The notice shall be substantially as set forth below:

**Notice:** This subdivision's home owners (business) association is responsible for perpetual maintenance of a protected Stream Corridor, as defined and regulated in the SMC. This property is also subject to the obligations and requirements of a Stream Corridor Maintenance Agreement approved by the City and recorded with the Johnson County Records and Tax Administration. Restrictions on the use or alteration of the Stream Corridor apply.

G. Home Owners or Business Association

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The Developer or Property Owner shall form a home owners or business association prior to the sale of any lots or recording the final plat. At a minimum the covenants and restrictions shall:

1. Establish covenants that include the provisions of the approved Stream Corridor Maintenance Agreement.
2. Place responsibility for permanent maintenance of the Stream Corridor with the association.
3. Grant authority to the home owners or business association to enter the stream corridor to fully perform all obligations pursuant to the Stream Corridor Maintenance Agreement.
4. Grant the City a Right of Entry for Inspection: When any Stream Corridor is installed on private property, or when any new connection is made between private property and a Stormwater Drainage System, Landowner shall grant to the City in a manner and form acceptable to the Director, the right to enter property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when there exists a reasonable basis to believe that a violation of this Chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this Chapter.
5. Grant the City's rights in the event that the responsible party fails or is unable to perform any of the obligations in the maintenance agreement.
6. Require the Property Owner to record the required deed restrictions with the Johnson County Records and Tax Administration concurrent or prior to recording the final plat.

#### 11.36.040 Deviations.

The Planning Commission or Governing Body may, in the process of approving preliminary plats, final plats, preliminary development plans or final development plans, approve deviations from the specific terms of this Chapter which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship for the applicant, and provided that the spirit of this Chapter shall be observed, the public safety and welfare secured and substantial justice done for the applicants.

An application for a deviation may only be granted upon a finding that all of the following conditions have been met:

- A. That the granting of the deviation will not adversely affect the rights of adjacent landowners.
- B. That the strict application of the provisions of this Chapter would constitute unnecessary hardship upon the landowner represented in the application.
- C. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
- D. That granting the deviation will comply with the general spirit and intent of this Chapter.

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- E. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or state laws.

Upon consideration of the factors listed above and the purposes of this Chapter, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter. In considering deviation applications, the City has the discretion of using any or all of the following project evaluations when, in the judgment of the Planning Commission or Governing Body, these evaluations are relevant and appropriate. No individual or combination of evaluations are necessarily required for an application to be approved, and the Planning Commission or Governing Body may weigh these evaluations in light of all relevant considerations in determining whether or not to approve an application.

- A. Any increase in danger to life and property due to flooding or erosion damage.
- B. The susceptibility of the proposed facility to damage from factors such as flooding, stream bank erosion and channel migration and the effect of such damage on the individual owner.
- C. The availability of alternative locations for the proposed development.
- D. The compatibility of the proposed development with the comprehensive plan.
- E. The deviation is the minimum necessary to afford relief.
- F. Any decrease in the average width of the stream corridor set aside.
- G. Any increase to bank instability or bank erosion and the resulting effects on other properties.
- H. The extent to which the proposed development retains the natural terrain within the stream corridor while avoiding such activities such as filling, grading and constructing retaining walls.
- I. The extent to which the proposed development provides protection from negative impacts to: water quality, base flow potential through infiltration, runoff velocity, temporary storage area for flood waters and sediment retention capability which is compatible with the intent of this Chapter.
- J. The extent to which the proposed development provides aesthetic enhancement, preservation of habitat for plants and animals, recreational opportunities, educational value and effective screening from adjoining land uses which are compatible with the intent of this Chapter.

**PARAGRAPH 16.** Chapter 11.60 of the Shawnee Municipal Code is hereby amended to read as follows:

## **CHAPTER 11.60 - COMPLIANCE, ABATEMENT AND PENALTIE**

### **11.60.010 Abatement of Nuisances and Hazards.**

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In addition to the penalties provided for by this Title, when the Director determines there exists a condition or act prohibited by this Title, the Director may, in their sole discretion, take whatever action they deem necessary to immediately abate the nuisance or hazard to protect the safety of Persons or property, and the City may be reimbursed from any surety, escrow account or letter of credit, required by this Chapter, and/or may assess, to the property where a violation has been identified by the Director, all costs of the abatement, including administrative costs, materials, and personnel, to the Person who commits, permits, maintains, directs, or authorizes the nuisance or hazard in violation of this Title.

The Governing Body hereby delegates to the Director the duty of determining when a violation of this Title exists. This determination shall be made in written form by the Director, acting on behalf of the Governing Body, and the Director may proceed to abate and assess the nuisance.

**11.60.020 - Failure to Comply with Order.**

No Person shall intentionally impede or obstruct the Director or their lawful designee from the lawful performance of duties or activities related to enforcement of this Title or abatement of violations, through the use of restraint, coercion, intimidation or by force and violence or threat thereof. No Person shall intentionally disregard an Order of the Director or their lawful designee, to immediately cease and discontinue a condition or act prohibited by this Title, or to fail to take action necessary to immediately abate and/or remedy the conditions prohibited by this Title and as required by the Director.

**11.60.030 - Additional Persons Responsible for Compliance.**

In addition to the Person who commits, permits, maintains, directs, or authorizes, a violation of this Title, additional Persons responsible for compliance with this Title shall include, jointly and severally:

- A. The owner or occupant of the property upon which a violation or an illicit connection or discharge occurs;
- B. The Person who submits or to whom a Building Permit or NPDES Permit is issued that relates to the property upon which a violation or an illicit connection or discharge occurs;
- C. Any Person who participates in a violation or an illicit discharge or illicit connection as prohibited by this Title.

**11.60.040 - Penalties.**

Any Person violating any of the provisions of this Title shall be guilty of a Class C Offense. The imposition of a penalty shall not prohibit any action by the Director to enforce compliance, prevent a violation, or remedy a violation, nor shall it prohibit the Director from imposing liens or assessments necessary to remedy a violation of this Title. In addition to the imposition of a penalty, the Court may assess restitution and

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reimbursement of all costs of any abatement, including administrative, materials, and personnel, to the Person who commits, permits, maintains, directs, or authorizes, a violation of this Title.

The City shall keep a record of the total cost of such abatement or removal incurred by the City, and shall bill such costs to the owner of the property where a violation of this Title takes place by certified mail, return receipt requested. If the assessment for such costs is unpaid after sixty(60) days from the date of billing, the City Clerk, at the time of certifying City taxes, shall certify such costs to the County Clerk, with instructions to extend the same on the tax roll of the County against the applicable lot or parcel of ground, and ask that it be collected by the County Treasurer and paid to the City as City taxes are collected and paid. Nothing in this Section shall limit the City's right to pursue collection both by levying a special assessment and in any other manner provided for by law, but only until the full cost and any applicable interest has been paid in full.

The imposition of a penalty for any violation or noncompliance shall not excuse any violation, permit a violation to continue, or excuse any obligation to remedy any violation. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Title. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Title. Each day that a violation occurs or is permitted to continue shall constitute a separate offense.

The previously existing Chapter 11.60 of the Shawnee Municipal Code is hereby repealed.

#### **PARAGRAPH 17. Savings Clause and Severability.**

**SAVINGS CLAUSE.** Neither the passage of this Ordinance, the repeal of the Ordinance or Code provisions set forth herein, or the future repeal or amendment of any Ordinance or Code section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance or any Ordinance or Code amended or repealed herein, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under any Ordinance or Code, nor be construed as affecting any of the provisions of such Ordinance or Code relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Ordinance or Code, and all rights and obligations thereunder shall continue in full force and effect. Any Ordinance or Code sections amended or repealed, are hereby continued in force and effect after the passage, approval, and publication of this Ordinance for the purposes of such rights, fines, penalties, forfeitures, liabilities, and actions therefore.

**SEVERABILITY.** If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this

ORDINANCE NO. 3394 PAGE 28

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Ordinance if it would have known that such part or parts thereof would be declared invalid.

**PARAGRAPH 18.** This Ordinance shall take effect and be in force from and after its passage and publication as required by law.

PASSED by the Governing Body this 25 day of October, 2021.

APPROVED AND SIGNED by the Mayor this 25 day of October, 2021.

CITY OF SHAWNEE, KANSAS



By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Michelle Distler", written over a horizontal line.

Michelle Distler, Mayor

ATTEST:

By: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Stephanie Zaldivar", written over a horizontal line.

Stephanie Zaldivar, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Ellis Rainey", written over a horizontal line.

Ellis Rainey, City Attorney

# The Legal Record

1701 E. Cedar St., Ste. 111  
Olathe, KS 66062-1775  
(913) 780-5790

CITY OF SHAWNEE - CITY CLERK  
11110 JOHNSON DR  
SHAWNEE KS 66203-2750

First published in The Legal Record, Tuesday, November 2, 2021.

## CITY OF SHAWNEE Summary of Ordinance No. 3394

On the 25 day of October, 2021, the Governing Body of the City of Shawnee, Kansas passed Ordinance No. 3394, Amending Chapter 11.04 Stormwater Management Program Definitions, Chapter 11.16 Stormwater Treatment, Chapter 11.20 Land Disturbance Activities, Chapter 11.24 Stormwater Detention, Adding a new Chapter 11.36 Regulating Stream Corridor Management, of the Shawnee Municipal Code, and amending the Penalty Provisions of Chapter 11.60, all related to the Management and Regulation of Stormwater in the City.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk or at [www.cityofshawnee.org](http://www.cityofshawnee.org).

The undersigned hereby certifies as prescribed by KSA 12-3007 that the foregoing Summary of Ordinance No. 3394 is legally accurate and sufficient.

Dated: October 25, 2021

/s/ M. Ellis Rainey, II, City Attorney  
11/2

## Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;  
Maureen Gillespie, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Clerk for The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

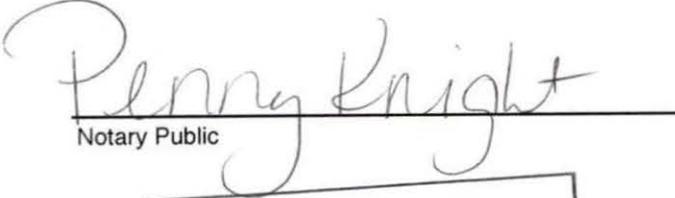
SUMMARY OF ORDINANCE NO. 3394  
11/2/21



Maureen Gillespie, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

November 2, 2021



Notary Public

PENNY KNIGHT  
Notary Public-State of Kansas  
My Appt. Expires Dec. 31, 2021

L93767  
Publication Fees: \$9.90