

CHAPTER 15.

SURFACE WATER MANAGEMENT

- Article 1. Definitions
- Article 2. Illicit Discharge
- Article 3. Sediment and Erosion Control
- Article 4. Post Construction Storm Water Quality Treatment
- Article 5. Stormwater Utility

ARTICLE 1. DEFINITIONS

15-101 DEFINITIONS.

(a) As used in this Chapter, the following abbreviations shall have the following meanings unless otherwise specified: **1**

APWA Kansas City Metropolitan Chapter of the American Public Works Association and/or the American Public Works Association

CPESC, INC. Certified Professional in Erosion and Sediment Control, Inc.

FEMA Federal Emergency Management Agency

KDHE Kansas Department of Health and Environment

LDP Land Disturbance Permit

MARC Mid-America Regional Council

MS4 Municipal Separate Storm Sewer System

NPDES National Pollutant Discharge Elimination System

SWPPP Stormwater Pollution Prevention Plan

(b) 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 following terms or phrases shall have the meanings set forth in this Chapter:

¹ **Legal analysis: 15-101 DEFINITIONS, (a).** Added language to allow for terms that may be intentionally defined differently in a specific article.

- (1) "Approved Plan" means a set of representational drawings or other documents that have been approved by the City as complying with the provisions of this Chapter submitted by an Applicant (either as an independent submittal or a part of another Development application(s)) required by the City Code as a prerequisite to obtaining a building or Land Disturbance permit and that contain the information and specifications required by the City to minimize Stormwater Runoff.
- (2) "Applicant" means any Person who makes application for an approved plan and a permit as required by this Chapter.
- (3) "As-Built Plan" means a record drawing or plan prepared and certified by a licensed Professional Engineer or Land Surveyor that represents the actual dimensions, contours, elevations, etc., of a completed structure, facility, or constructed feature.
- (4) "Best Management Practice" (BMP) means the Stormwater management practice used to prevent or control the discharge of Pollutants, including Sediment, and minimize Runoff, both directly and indirectly, to Stormwater, receiving waters, or Stormwater Drainage Systems, waters of the U.S. or water bodies found in the City of Westwood. BMPs may include structural or nonstructural solutions, a schedule of activities, prohibition of practices, maintenance procedures, or other management practices and programs. Except where in conflict with federal, state, or local law, "BMP" shall refer to the document propounded by the Mid-America Regional Council and Kansas City Metropolitan Chapter of the American Public Works Association known as the Manual of Best Management Practices for Stormwater Quality.
- (5) "Channel" means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.
- (6) "Construction" means constructing, clearing, grading, or excavations that result in soil disturbance. Construction includes structure demolition. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, emergency Construction activities required to immediately protect public health and safety, interior remodeling with no outside exposure of Construction material or Construction waste to the City's Stormwater Drainage System or other public waters, mechanical permit work, or sign permit work.
- (7) "Construction Site Operator" for the purpose of the Land Disturbance Permit and in the context of Stormwater associated with Construction activity, means any Person associated with a Construction project that meets either of the following two criteria:
 - (i) The Person has operational control over Construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 - (ii) The Person has day-to-day operational control of those activities at a project which is necessary to ensure compliance with a SWPPP or Erosion and Sediment Control Plan for the site or other permit conditions (e.g., the Person is authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).
- (8) "Detention" means the temporary storage of Stormwater Runoff in a Stormwater management practice with the goals of controlling peak discharge rates and/or providing

gravity settling of Pollutants.

(9) "Detention Facility" means a Detention Basin or alternative structure designed for the purpose of Detention Storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

(10) "Detention Basin" means any man-made area or structure that serves as Detention Storage, including: Dry Bottom Basin; any Detention Basin or facility designed to permit no permanent impoundment of water; and, Wet Bottom Basin, any Detention Basin or facility designed to permit permanent impoundment of water in addition to Detention Storage, also called a "Retention Basin" .

(11) "Detention Storage" means the temporary detaining or storage of Stormwater under predetermined or controlled conditions in or on dry bottom basins, wet bottom basins, roofs of buildings or structures also used for other purposes. paved or surfaced areas also used for other purposes, and underground structures or pipes where the surface is used for other purposes.

(12) "Developed Property" means that which has been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade, or landscaping, property other than undisturbed property.

(13) "Developer" means any Person proposing to or engaged in Development or Construction.

(14) "Development" means any activity, change in land use, or improvement on any parcel of land, including any subdivision, that alters the surface of the land that increases the imperviousness of or creates additional impervious surfaces, including but not limited to, pavement, buildings, structures, and recreational playing fields. The term does not include:

(i) Construction of any buildings, structures, and/or appurtenant service roads, drives, and walks on a site having previously provided Stormwater control as part of a larger Development;

(ii) Improvements on any site having a gross land area less than one acre in size, regardless of land use;

(iii) Remodeling, repair, replacement, and improvements to any structure or facility and appurtenances that do not cause an increased area of impervious surfaces on the site in excess of ten percent (10%) of that previously existing;

(iv) Construction of any one new single-family or duplex dwelling unit, irrespective of the site area, on which the same may be situated;

(v) Agricultural uses.

(15) "Development Application" means any application required by the City Code as a prerequisite to initiation of Development.

- (16) "Director" means the Director of the City's Public Works Department or the Director's designee.
- (17) "Discharge" means the rate of outflow of water from a Drainage Area or a component of a Stormwater Drainage System.
- (18) "Drainage Area" means the geographical area contributing Stormwater Runoff to a point under consideration; i.e., a watershed, tributary area, or catchment area.
- (19) "Easement" means a legal right granted by a landowner to a grantee allowing the use of private land for Stormwater management purposes.
- (20) "Erosion" means the process by which the ground surface is worn away by the action of the wind, water, ice, gravity, or artificial means, and/or Land Disturbance activities.
- (21) "Erosion and Sediment Control Plan" means a plan for the control of soil Erosion and Sediment resulting from a Land Disturbance activity, in compliance with the Westwood Design Standards.
- (22) "Floodplain" means the floodway and floodway fringe as identified by the Federal Flood Insurance Program of FEMA, or such other designation of the floodplain as is subsequently adopted by the City, and representing the regulated 100-year water surface and corresponding elevations.
- (23) "Harmful" means that amount of chlorine which can be detected, or of any Pollutant that would cause harm to any plant or animal life at any point in the Storm Drainage System, Municipal Separate Storm Sewer System or Water Body.
- (24) "Hotspot" means an area where land use or activities generate highly contaminated Runoff, with concentrations of Pollutants in excess of those typically found in Stormwater.
- (25) "Impervious Area" means the total number of square feet of hard surface area on a given property that either prevents or retards the entry of water into the soil matrix, or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on undeveloped land. "Impervious Area" includes but is not limited to, roofs, roof extensions, driveways, pavement and athletic courts.
- (26) "Impervious Cover" means those surfaces that cannot effectively infiltrate rainfall.
- (27) "Infiltration" means the process of percolating Stormwater into the subsoil.
- (28) "Infiltration Facility" means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above or below grade.
- (29) "Land Disturbance" means any activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise may cause Erosion or Sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of

materials.

(30) "Land Disturbance Permit (LDP)" means the local permit required by the City of Westwood for any Land Disturbance occurring in a given area.

(31) "Landowner" means that legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights on the land.

(32) "Landscape Architect" means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice landscape architecture.

(33) "Licensed Land Surveyor" means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice surveying.

(34) "Maintenance Agreement" means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of Stormwater management practices.

(35) "Maximum Extent Practicable" means the use of those Best Management Practices, which, based on sound engineering and hydro-geological principals, will, to the greatest degree possible and given all relevant considerations, including technology, climate, and site conditions, reduce Pollutants in Stormwater Runoff and minimize the amount of Stormwater Runoff from a site during and after Construction.

(36) "Municipal Separate Storm Sewer System" or "Public Storm Sewers" means the publicly maintained Stormwater Drainage System within this City, including all appurtenances and ancillary structures thereto, any conveyance or system of conveyances for Stormwater, including road drainage systems, streets, catch basins, Detention Basins, curbs, gutters, ditches, man-made, Channels, or storm drains, as well as any system that meets the definition of a Municipal Separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 C.F.R. 122.26, or amendments thereto.

(37) "Nonpoint Source Pollution" means Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, Pollutants from agricultural, silvicultural, mining, Construction, subsurface disposal and urban Runoff sources.

(38) "Non-Stormwater Discharge or Runoff" means any discharge to the Municipal Separate Storm Sewer System that is not composed entirely of Stormwater, including Surface Water Flow, that is resulting from residential, commercial, and industrial activities.

(39) "NPDES Stormwater Discharge Permit" means a National Pollutant Discharge Elimination System permit issued under authority delegated pursuant to 33 U.S.C. 1342(b) that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(40) "Off-Site Facility" means a Stormwater management measure located outside the subject property boundary described in the permit application for land Development activity.

(41) "On-Site Facility" means a Stormwater management measure located within the subject property boundary described in the permit application for land Development activity.

(42) "Perennial Vegetation" means grass or other appropriate natural growing vegetation that provides substantial land cover, Erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this Chapter, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

(43) "Permit Holder" means the Person that is issued a Permit by the City of Westwood.

(44) "Pollutant" means anything which causes or contributes to Pollution. Pollutants may include, but are not limited to: Hazardous waste; Industrial waste; paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to Pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from Construction; asphalt based materials; concrete and/or cement; and noxious or offensive matter of any kind. "Pollution" or "Pollutant" means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. The term "Pollution" or "Pollutant" shall include those items defined as "Pollutants" in Section 502(6) of the Federal Clean Water Act, or any amendments thereto, (33 U.S.C. §1362(6)), Pesticides as defined by K.S.A. 2-2438a and any amendments thereto, and insecticides, fungicides, herbicides, rodenticides, nematocides, defoliants, plant regulators, or desiccants, as defined by K.S.A. 2-2202 and any amendments thereto. The term "Pollution" or "Pollutant" shall not include uncontaminated Stormwater, potable water or reclaimed water generated by a lawfully permitted water treatment facility. The term "Pollution" or "Pollutant" also shall not include any substance identified in this definition, if through compliance with the Best Management Practices available, the discharge of such substance has been reduced or eliminated to the Maximum Extent Practicable. In an enforcement action, the burden shall be on the Person who is the subject of such action to establish the reduction or elimination of the discharge to the Maximum Extent Practicable through compliance with the Best Management Practices available.

(45) "Professional Engineer" means an engineer duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice engineering.

(46) "Qualified Erosion Control Specialist" means a Professional Engineer licensed in the State of Kansas or a Landscape Architect licensed in the State of Kansas who has received a minimum of eight (8) hours classroom instruction in Sediment and Erosion control taught by a qualified professional in Erosion and Sediment control or an individual possessing certification as a Certified Professional in Erosion and Sediment Control, certified by CPESC, Inc. or equivalent qualifications approved in writing by the Director as part of an approved Stormwater Pollution Prevention Plan or Erosion and Sediment Control Plan.

(47) "Recharge" means the replenishment of underground water reserves.

(48) "Sediment" means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

(49) "Westwood Design Standards" refers to the most current version of the APWA standards, as amended, including, but not limited to, Sections 2100, 5100, and 5600, except those provisions inconsistent with federal, state, or local law. In the event of an inconsistency, federal, state, or local law shall take precedence over the Westwood Design Standards.

(50) "Site" 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.

(51) "Stop Work Order" means an order issued which requires that all Construction activity on a site be stopped.

(52) "Stormwater Drainage System" means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to: pipes; culverts; bridges; open improved Channels; street gutters; inlets pumping stations; enclosed storm sewers; outfall sewers; surface drains; street; curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; Channels; ditches; rivers; streams; floodplains; water bodies; Detention and retention facilities; and other flood control facilities and works for the collection; conveyance; pumping; infiltration; treating; controlling; managing and disposing of Stormwater.

(53) "Stormwater" or "Stormwater Runoff" means any surface flow, Runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(54) "Stormwater Pollution Prevention Plan" (SWPPP) means a plan for the control of Pollutants, Pollution or soil Erosion and Sediment resulting from or during a Land

Disturbance activity, complying with the Westwood Design Standards and may include, without being limited to, the drawings, specifications, Construction documents, schedules, inspection reports, copies of permits or other related documents upon which Stormwater Water Quality Treatment Best Management Practices to be used on a site are set forth.

(55) "Upstream Tributary Area" means the acreage that discharges Runoff to any area of a Construction site where a Land Disturbance activity is taking place. As used herein, the Construction site shall mean that area described within the Land Disturbance Permit.

(56) "Water Quality Volume (WQv)" means the storage needed to capture and treat ninety percent (90%) of the average annual Stormwater Runoff volume. Numerically (WQv) will vary as a function of long term rainfall statistical data.

(57) "Water Quality Storm" means the storm event that produces less than or equal to ninety percent (90%) Stormwater Runoff volume of all 24-hour storms on an annual basis. In the Kansas City metropolitan area this is the 1.37" storm.

(58) "Water Body" means all surface watercourses and Water Bodies, including all natural and man-made waterways and definite Channels and depressions in the earth that may carry Stormwater or hold water, even though such waterways may only carry water during rains and storms and may not carry Stormwater at and during all times and seasons and including all areas defined at 40 C.F.R. §122.2, and amendments thereto.

(59) "Wetland" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(60) "Watershed Studies" means all studies, public or private, that examine a Drainage Area to determine Stormwater surface elevations and/or the condition of streamways or Water Bodies.

(Code 2008, § 15-101)

ARTICLE 2. ILLICIT DISCHARGE

15-201. PURPOSE AND FINDINGS.

(a) The purpose of this Article shall be to prevent the discharge of pollutants from land and activities within the City into the municipal separate storm sewer system (MS4) and / or into surface waters.

(b) The Governing Body of the City hereby finds that pollutants are discharged into surface waters, both through inappropriate non-stormwater discharges into the MS4 or the surface waters directly, and through the wash off and transport of pollutants found on the land and built surfaces by stormwater during rainfall events.

(c) Further, the Governing Body of the City hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the

natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.

(d) Further, the Governing Body of the City hereby finds that this Article will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

(e) Further, the Governing Body of the City hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.

(f) Further, the Governing Body of the City hereby finds that a reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize such discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.
(Code 2008, § 15-201; Ord. 869, Sec. 3)

15-202. ABBREVIATIONS. ²

The following abbreviations when used in this Article shall have the designated meanings:

- (a) BMP - Best Management Practice
- (b) CFR - Code of Federal Regulations
- (c) EPA - Environmental Protection Agency
- (d) HHW - Household Hazardous Waste
- (e) KDHE - Kansas Department of Health and Environment
- (f) MS4 - Municipal Separate Storm Sewer System
- (g) NPDES - National Pollutant Discharge Elimination System
- (h) PST - Petroleum Storage Tank
(Code 2008, § 15-202; Ord. 869, Sec. 4)

15-203. DEFINITIONS.

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

² **Legal analysis: 15-202. ABBREVIATIONS.** Delete this section and move these to the "definitions" in Article 1. Delete duplicates.

- (a) “Best management practices (BMPs)” - means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. ³
- (b) “Car” - means any passenger car (as defined in K.S.A. 8-1445 as amended), passenger van, van, pickup truck, motorcycle, recreational vehicle, truck, tractor trailer, conveyance, motor home, or vehicle including, but not limited to, any device defined as a motor vehicle in K.S.A. 8-2401 as amended.
- ~~(c) “City” means the City of Westwood, Kansas. ⁴~~
- (d) Clean Water Act - means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
- ~~(e) “Code” means the City of Westwood City Code. ⁵~~
- ~~(f) “Director” means the Director of Public Works or the Director’s authorized representative. ⁶~~
- (g) “Discharge” - means the addition or introduction, directly or indirectly, of any pollutant, stormwater, or any other substance into the MSA or surface waters.
- (h) “Domestic sewage” - means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.
- (i) “Extremely hazardous substance” - means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.
- (j) “Fertilizer” - means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop,

³ **Legal analysis: 15-203. DEFINITIONS, (a) Best management practices (BMP).** This term is defined in Article 1 with a slightly different definition. Please advise whether to revise and combine these two instances into one definition in Article 1, applicable to the entire chapter.

⁴ **Legal analysis: 15-203. DEFINITIONS, (c) City.** Delete as covered by general provisions in Chapter 1.

⁵ **Legal analysis: 15-203. DEFINITIONS, (e) Code.** Delete as covered by general provisions in Chapter 1.

⁶ **Legal analysis: 15-203. DEFINITIONS, (f) Director.** Delete as covered by the definitions in Article 1 of this chapter, unless the term is to represent a different individual in this article.

or a mixture of two or more fertilizers.

(k) "Hazardous household waste (HHW)" - means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

(l) "Hazardous substance" - means any substance listed in Table 302.4 of 40 CFR Part 302.

(m) "Hazardous waste" - means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

(n) "Industrial waste" - means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

(o) "Municipal separate storm sewer system (MS4)" - means the system of conveyances, (including roads with drainage systems, municipal streets, private streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage. ⁷

(p) "NPDES" - means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the federal Clean Water Act.

(q) "NPDES permit" - means for the purpose of this chapter, a permit issued by United States Environmental Protection Agency (EPA) or the state of Kansas that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(r) "Oil" - means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

~~(s) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.~~⁸

(t) "Pesticide" - means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator,

⁷ **Legal analysis: 15-203. DEFINITIONS, (o) Municipal separate storm sewer system (MS4).** Move this definition to Article 1 definitions, as the term is used in multiple articles throughout the chapter.

⁸ **Legal analysis: 15-203. DEFINITIONS, (s) person.** Delete as covered by general provisions in Chapter 1.

defoliant, or desiccant.

(u) "Petroleum Product" - means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and diesel fuel.

(v) "Pollutant" - means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil waste, incinerator residue, sewage, pet and livestock waste, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, oil and petroleum products, used motor oil, anti-freeze, litter, pesticides, and industrial, municipal, and agricultural waste discharged into water. ⁹

(w) "Property Owner" - shall mean the named property owner as indicated by the records of the Johnson County, Kansas Office of Records and Tax Administration;

(x) "Release" - means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

(y) "Sanitary sewer" - means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

(z) "Septic tank waste" - means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(aa) "Sewage" - means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

~~(bb) "State" - means the state of Kansas. ¹⁰~~

~~(cc) "Stormwater" - means stormwater runoff, snow melt runoff, and surface runoff and drainage. ¹¹~~

⁹ **Legal analysis: 15-203. DEFINITIONS, (v) Pollutant.** This term was defined differently and more comprehensively in the chapter definitions of Article 1. Please advise whether to retain this as an article-specific definition of pollutant, or delete it as covered by Article 1.

¹⁰ **Legal analysis: 15-203. DEFINITIONS, (bb) State.** Delete as covered by general provisions in Chapter 1.

¹¹ **Legal analysis: 15-203. DEFINITIONS, (cc) Stormwater.** Delete as covered by the chapter definitions in Article 1.

(dd) "Surface waters" - means any body of water classified as "surface waters" by the state of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States".

(ee) "Waste" - means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. The Federal definition of solid waste is found at 40 CFR 257.2.

(ff) "Water quality standard" - means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

(Code 2008, § 15-203; Ord. 869, Sec. 5)

15-204. GENERAL PROHIBITION.

(a) No person shall release or cause to be released into the MS4, or into any surface waters within the City, any discharge that is not composed entirely of stormwater that is free of pollutants, except as allowed elsewhere herein.

(b) Notwithstanding any other provisions of this Article, any discharge shall be prohibited by this Article if the discharge in question has been determined by the Director to be a source of a pollutant to the MS4 or to surface waters, written notice of such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.

(Code 2008, § 15-204; Ord. 869, Sec. 6)

15-205. SPECIFIC PROHIBITIONS AND DUTIES.

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition herein, but are provided to address specific discharges that are frequently found or are known to occur:

(a) No Person shall release or allow to be released any of the following substances into the MS4:

(1) Any new or used petroleum product or oil;

(2) Any industrial waste;

(3) Any hazardous substance or hazardous waste, including household hazardous waste;

- (4) Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste;
- (5) Any garbage, rubbish or other waste;
- (6) Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;
- (7) Any yard wastes which have been moved or gathered by a person;
- (8) Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;
- (9) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;
- (10) Any wastewater from commercial floor, rug, or carpet cleaning;
- (11) Any wastewater from the washdown or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed;
- (12) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
- (13) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
- (14) Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area or any pet wastes generally;
- (15) Any filter backwash from a swimming pool or fountain, except that nothing in this Article shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction;
- (16) Any swimming pool, fountain or spa water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the water or during cleaning of the facility;
- (17) Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or surface waters;

- (18) Any contaminated runoff from a vehicle wrecking or storage yard;
 - (19) Any substance or material that will damage, block, or clog the MS4;
 - (20) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state;
 - (21) Any other discharge that causes or contributes to causing the City to violate a state water quality standard, any City NPDES stormwater permit or authorization, or any state-issued discharge permit for discharges from its MS4.
- (b) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures, except as allowed for in conformance with the Westwood Municipal Code.
- (c) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on his or her property.
- (d) No person shall use pesticides, herbicides, or fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides, and fertilizers shall be stored, transported, and disposed of in a manner to prevent release to the MS4.
- (e) No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, state, or federal jurisdictions.
(Code 2008, § 15-205; Ord. 869, Sec. 7)

15-206. EXCEPTIONS TO PROHIBITED ACTS.

- (a) Unless identified by the City or KDHE as a significant source of pollutants to surface water the following non-stormwater discharges are deemed acceptable and not a violation of this Article:
- (1) water line flushing;
 - (2) diverted stream flow;
 - (3) rising groundwater;
 - (4) uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
 - (5) uncontaminated pumped groundwater;

- (6) contaminated groundwater if authorized by KDHE and approved by the City;
- (7) discharges from potable water sources;
- (8) foundation drains;
- (9) air conditioning condensate;
- (10) irrigation waters;
- (11) springs;
- (12) water from crawl space pumps;
- (13) footing drains;
- (14) individual residential car washing;
- (15) flows from riparian habitats and wetlands;
- (16) de-chlorinated swimming pool discharges excluding filter backwash;
- (17) street wash waters (excluding street sweepings which have been removed from the street);
- (18) discharges or flows from emergency fire fighting activities;
- (19) heat pump discharge waters (residential only);
- (20) treated wastewater or other discharges meeting requirements of an NPDES permit;
- (21) periodic and temporary application of substances by the City to the rights-of-way of the City for traffic safety or to protect the health, safety, and welfare of the citizens, as prescribed by the Director of Public Works; and
- (22) other discharges determined not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance.

(b) Discharges specified in writing by the Director as being necessary to protect public health and safety.

(Code 2008, § 15-206; Ord. 869, Sec. 8)

15-207. INSPECTION AND DETECTION PROGRAM.

The Director is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the City. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited

discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.

(Code 2008, § 15-207; Ord. 869, Sec. 9)

15-208. RELEASE REPORTING AND CLEANUP.

(a) Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.

(b) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(c) In the event of a release of non-hazardous materials, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three business days of the phone notice. ¹²

(Code 2008, § 15-208; Ord. 869, Sec. 10)

15-209. ENFORCEMENT; DESIGNATION OF OFFICER; ABATEMENT; RIGHT OF ENTRY; PENALTY.

The Director or his or her appointed representative shall be designated as the public officer charged with the administration and enforcement of this Article. The public officer shall authorize the investigation of violations of the Article. If it is determined that a violation of this Article exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in the Westwood Municipal Code. Further, any violation of this Article shall constitute an Ordinance violation offense and shall also be subject to the penalties set forth in Westwood Municipal Code Section 1-116 in addition to, and not in lieu of, any and all remedies and penalties available to the City. Each day during which any act violative of this Article takes place shall constitute a separate violation of this Article.

(Code 2008, § 15-209; Ord. 869, Sec. 11)

ARTICLE 3. SEDIMENT AND EROSION CONTROL

15-301 OUTLINE OF SECTIONS

15-302 Purpose.

15-303 Definitions.

15-304 Land Disturbance Activity.

¹² **Legal analysis: 15-208. RELEASE REPORTING AND CLEANUP, (c).** Please advise if the city wishes to include a provision allowing for email notification to the Director.

- 15-305 Land Disturbance Permit.
- 15-306 Land Disturbance Permit Inspections.
- 15-307 For Land Disturbances Of Less Than One Acre.
- 15-308 Fees.
- 15-309 Additional Persons Responsible for Compliance.
- 15-310 Compliance and Use.
- 15.311 Enforcement of Code Provisions.
- 15-312 Severability.
- 15-313 Savings.

15-302. 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 Westwood 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 Sediment control standards in compliance with the City's Kansas Water Pollution Control General MS4 Permit.

The purpose of this Article 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.
(Code 2008, § 15-302)

15-303 DEFINITIONS.

As used in this Article, 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 Section 15-101, et seq., of the Code of the City of Westwood.
(Code 2008, § 15-303)

15-304 LAND DISTURBANCE ACTIVITY.

(a) No Person shall authorize or maintain a Land Disturbance activity or Construction Site that fails to comply with the Westwood Design Standards and the requirements of this Article.

(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 (LDP) 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 Article.

(1) No Person shall fail to immediately take all action necessary to completely abate any violation of this Article including but not limited to the establishment or restoration of Erosion and Sediment Control BMP's as required by this Article and remedial action to clean and/or remove Sediment and other Pollutants in violation of Chapter 15.

(Code 2008, § 15-304)

15-305 LAND DISTURBANCE PERMIT.

The issuance and approval of a Land Disturbance Permit is subject to and contingent upon compliance with this Article and all other City permits, Code of the City of Westwood, other City Regulations and other requirements specific to the Development during the duration of the Land Disturbance, and such Land Disturbance Permit may be revoked or withdrawn upon a failure to comply with this Article. The failure to comply with the requirements stated in this Article shall be unlawful and shall constitute a violation of this Article. No Person shall authorize or maintain a Land Disturbance activity without first obtaining any Land Disturbance Permit required by this Article. The Landowner of the land upon which a Land Disturbance activity takes place, shall be the Person responsible for obtaining any required Land Disturbance Permit except for work conducted in the Right-of-Way or Utility Easements. The Person or Construction Site Operator conducting Land Disturbance activities in the Right-of-Way or in a Utility Easement shall be responsible for obtaining any required Land Disturbance Permit.

(a) A Land Disturbance Permit is required as necessary to permit the City to meet its permit requirements under the National Pollutant Discharge Elimination System permit or as required by law, or for the following Land Disturbance activities (specific requirements may vary pursuant to the Westwood Design Standards):

(1) The cumulative disturbance of an area greater than or equal to one (1) acre; or

(2) The disturbance of any part of a larger common plan of Development or sale that; when completed; will disturb a cumulative area of greater than or equal to one (1) acre.

(b) A Land Disturbance Permit is not required for the following:

(1) Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property;

(2) Landscaping or home gardening;

(3) Re-establishment of lawn areas; or

(4) Agricultural uses with the exception that if the Director determines that Erosion and Sediment controls are needed then the following standards or permits may be required to be implemented and maintained:

- (i) United States Department of Agriculture Natural Resources Conservation Service Erosion and Sediment Control Standards or
- (ii) Land Disturbance Permit may be required.
- (c) A Land Disturbance Permit application shall include, but is not limited to, the following minimum submittal requirements:
 - (1) A Site-specific Erosion and Sediment Control Plan that complies with this Article and the Westwood Design Standards;
 - (2) A Site-specific grading plan that complies with this Article and the Code of the City of Westwood, the Westwood Design Standards, and other applicable Westwood Policies and Administrative Statements;
 - (3) A Stormwater Pollution Prevention Plan (SWPPP) that complies with this Article and the Westwood Design Standards. The SWPPP must be in compliance with the State of Kansas KDHE General Permit for NPDES Stormwater Runoff from Construction Activities;
 - (4) Contact information for the Applicant, Construction Site Operator, Project Owner, Qualified Erosion Control Specialist, and Inspector;
 - (5) Area to be disturbed;
 - (6) Duration of Land Disturbance;
 - (7) Security as required by this Article;
 - (8) Permit Fee as authorized by this Article.
- (d) The Construction Site Operators required to be identified in the application shall be trained in Erosion and Sediment control practices, shall maintain a copy of the SWPPP on the project Site and shall comply with all the requirements of the LDP.
- (e) The Land Disturbance activity described in the Land Disturbance Permit application shall be commenced within the time limits defined on the application. The Land Disturbance activity described and authorized in the Land Disturbance Permit application shall adhere to the schedule defined in the Land Disturbance Permit application or be subject to additional fees defined in this Article.
- (f) The Land Disturbance Permit application, Erosion and Sediment Control plans and all other LDP requirements shall be prepared under the supervision of and sealed by a Professional Engineer or Landscape Architect licensed in the state of Kansas who has received a minimum of eight (8) hours classroom instruction in Sediment and Erosion control taught by a Qualified Erosion Control Specialist.
- (g) A Qualified Erosion Control Specialist shall be authorized by the Permit Holder of the Land Disturbance Permit and identified on the Land Disturbance application as the

Person responsible to manage and ensure that all work is in compliance with the SWPPP and all requirements of the Land Disturbance Permit approved by the City.

- (h) A Land Disturbance Permit not being required for a Site does not exempt a Site from following the basic Erosion control practices defined in the Westwood Design Standards.
- (i) If the Land Disturbance activity threatens or impedes the ability of the City to meet its own permit requirements under the NPDES Stormwater Discharge Permit the Director may require any Person to obtain a Land Disturbance Permit in full compliance with this Article.
- (j) Every permit shall expire based on the time limits defined in the application.
- (k) No Person required by this Article to obtain a Land Disturbance Permit shall authorize or maintain a Land Disturbance activity or a Site of Construction, which is not maintained at all times, in compliance with the Site -specific Erosion and Sediment Control Plan approved by the Director.
- (l) No Person shall permit, authorize or maintain a Land Disturbance activity or a Construction activity until all Erosion and Sediment control measures identified in this Article have been installed, inspected, and approved in accordance with this Article.
- (m) No Person required by this Article to obtain a Land Disturbance Permit shall fail to obtain a satisfactory final inspection and City approval of the full Site restoration in compliance with all requirements of this Article, prior to the expiration of the Land Disturbance Permit.
(Code 2008, § 15-305)

15-306 LAND DISTURBANCE PERMIT INSPECTIONS.

- (a) Maintenance of Control Measures. All required Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times.
- (b) Routine Inspection. It shall be the duty of the Permit Holder to provide routine inspections of the Construction Site and maintain effective Erosion and Sediment Control measures. Routine inspections shall be performed once per week, more frequently if required on the Plan, and within twenty-four (24) hours following each rainfall event of half an inch (1/2") or more within any twenty-four (24) hour period. A log shall be kept of these inspections by the Qualified Erosion Control Specialist as a part of the SWPPP. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency
- (c) The LDP application shall designate the Qualified Erosion Control Specialist who shall provide the routine inspections required by this Section and/or designate a qualified inspector. The designation shall be made, in writing, to the Director at the time the Land Disturbance Permit application is submitted for approval. The Qualified Erosion Control Specialist and or their assigned Inspector that performs the Routine Inspections shall maintain a copy of the most current Erosion and Sediment Control Plan at the

Construction Site at all times. The Inspection shall be done under the supervision of the Qualified Erosion Control Specialist. The written reports shall be submitted by the Qualified Erosion Control Specialist to City as required by and in compliance with the Westwood Design Standards. The City shall not be designated as an inspector.

(d) Initial Inspection. The Permit Holder shall notify the Director when initial Erosion and Sediment Control measures are installed in accordance with the Erosion and Sediment Control Plan. No Land Disturbance activities shall begin prior to written approval by the Director of the certification, by the Qualified Erosion Control Specialist, that all pre-Construction Erosion and Sediment Control measures are correctly installed per the Approved Plan.

(e) A Land Disturbance Permit shall not be closed until a final inspection and approval of the site stabilization is issued by the City. No final certificate of occupancy shall be issued until a Site is stabilized, restored and the Land Disturbance Permit's requirements have been satisfied and the permit closed. A Site shall be considered stabilized and restored when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover seventy percent (70%) of the Upstream Tributary Area found within the area defined by the Land Disturbance Permit and as required by the Director. All portions of the Site using Perennial Vegetation for ground stabilization shall be homogeneously covered with at least a seventy percent (70%) vegetation density. Restoration includes the removal of all non- permanent Erosion and Sediment Control devices for the Site. Final Certification of the Restoration and Stabilization of the Site shall be submitted for approval to the Director by the Qualified Erosion Control Specialist.

(f) A Land Disturbance Permit acknowledges and conveys to the Director the right to enter upon property described in the Land Disturbance Permit, as necessary to enforce and carryout the provisions of this Article.
(Code 2008, § 15-306)

15-307 FOR LAND DISTURBANCES OF LESS THAN ONE ACRE.

(a) Land Disturbances less than one (1) acre that are not covered by a LDP and require a building permit or work in the right-of-way permit will require an Erosion and Sediment Control Plan to be submitted in compliance with the Westwood Design Standards.

(b) Franchised and/or Public Utilities shall obtain a General Land Disturbance Permit for Land Disturbances of less than one (1) acre in-lieu of obtaining individual project Land Disturbance Permit. The General Land Disturbance Permits for franchised and public utilities will be renewed annually and shall include the effective erosion control standards and construction methods that are to be implemented on the utility's projects, conforming to the Westwood Design Standards. The Fee and performance surety for a General Land Disturbance Permit will be as shown in the latest schedule of fees established administratively by the City of Westwood.
(Code 2008, § 15-307)

15-308 FEES.

(a) Prior to the issuance of Land Disturbance Permit each Applicant shall pay to the City a fee as established by the Governing Body. 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 Article shall not be charged a permit fee when obtaining a Land Disturbance Permit for 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 Article, shall pay additional permit fees as indicated in the latest schedule of fees established administratively by the City of Westwood Code.

(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 Article. 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 as defined in the latest schedule of fees established administratively by the City of Westwood. 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.
(Code 2008, § 15-308)

15-309 ADDITIONAL PERSONS RESPONSIBLE FOR COMPLIANCE.

The Person responsible for compliance with this Article 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 is 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.
(Code 2008, § 15-309)

15-310 Compliance and Use.

The property described in a Land Disturbance Permit shall be maintained at all times in compliance with all provisions of the Code of the City of Westwood, state and federal laws, Westwood Design Standards, 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.

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 Article, and shall comply with the Westwood Design Standards 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 Article shall be unlawful and shall constitute a violation of this Article.

~~The provisions of this Article shall be in effect upon passage and publication as provided by law. A LDP shall not be required for any Land Disturbance activities that have a valid City permit issued prior to the effective date herein.~~ **13**
(Code 2008, § 15-310)

15-311 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 Article, shall be ordered by the Director to take remedial action on said land to prevent the occurrence or recurrence of a violation of this Article. Remedial action shall include, but not be limited to, conformance to the requirements of this Article. 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 Article, 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 Article. 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 facsimile contacts as provided in the Land Disturbance Permit application. **14**

In addition to the enforcement provisions of the Code of the City of Westwood, 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 Article or the Erosion and Sediment Control Plan, including required drainage, grade or elevation plans, or not in compliance

13 Legal analysis: 15-310 Compliance and Use. Delete effective date language as no longer needed. Assuming any work commenced under a permit prior to the effective date has concluded, also delete last sentence as no longer needed.

14 Legal analysis: 15-311 Enforcement of Code Provisions. In paragraph 2, please advise if the city would like to add a provision allowing for notice by email.

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 Westwood Design Standards;
- (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 Article, 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, or 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 written 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 written 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 Article.

(Code 2008, § 15-311)

~~15-312 SEVERABILITY.~~¹⁵

~~If any part or parts of this Article shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Article. The Governing Body hereby declares that it would have passed the remaining parts of this Article if it had known that such part or parts thereof would be declared invalid.
(Code 2008, § 15-312)~~

15-313 SAVINGS CLAUSE.

Neither the adoption of this Article, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Article, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under any provision of the Code of the City of Westwood, nor be construed as affecting any of the provisions of the Code of the City of Westwood 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 provision of the Code of the City of Westwood, and all rights and obligations thereunder shall continue in full force and effect.
(Code 2008, § 15-313)

ARTICLE 4. POST CONSTRUCTION STORM WATER QUALITY TREATMENT**15-401 OUTLINE OF SECTIONS**

- 15-402 Purpose and Intent.
- 15-403 Interpretations.
- 15-404 Relationship to Other Laws.
- 15-405 Disclaimer of Liability.
- 15-406 Applicability.
- 15-407 Technical Specifications and Design Criteria Adopted.
- 15-408 Submittal of Studies, Plans, and Specifications.
- 15-409 Certification of Studies, Plans, and Specifications.
- 15-410 Stormwater Management Permit Required.
- 15-411 Easements.
- 15-412 Issuance of Permit.
- 15-413 Repairs During Maintenance Period.
- 15-414 Notice of Acceptance.
- 15-415 As-Built Plans.
- 15-416 Facility Maintenance.
- 15-417 Annual Certification.
- 15-418 Disturbance of Constructed Facilities.
- 15-419 Severability
- 15-420 Savings Clause.

15-402. PURPOSE AND INTENT.

¹⁵ **Legal analysis: 15-312 SEVERABILITY.** Delete as covered by general provisions in Chapter 1.

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 Westwood is subject to the NPDES requirements of federal law as an operator of a Small Municipal Separate Storm Sewer System (MS4), and the City is therefore obligated by federal law to develop, implement, and enforce minimum post-Construction Stormwater quality treatment standards in compliance with the City's Kansas Water Pollution Control General MS4 Permit.

The purpose of this Article shall be to establish post-Construction minimum Stormwater management requirements and controls on any new Development or redevelopment projects that disturb greater than or equal to one (1) acre. This Article also will establish requirements for long-term maintenance of structural controls within the City for drainages into the Municipal Separate Storm Sewer System (MS4) and/or into surface waters. This Article seeks to meet this purpose through the following objectives:

- (a) Minimize increases in Stormwater Runoff from any development in order to reduce non-point source Pollution, siltation, and streambank Erosion and maintain the integrity of stream channels;
- (b) Minimize increases in non-point source Pollution caused by Stormwater Runoff from development which would otherwise degrade local water quality, particularly if receiving water bodies are classified as impaired on the current version of the 303d listing of impaired waters in Kansas as identified by the Kansas Department of Health and Environment (KDHE); and
- (c) Reduce Stormwater runoff rates, soil Erosion, and non-point source Pollution, wherever possible, through Stormwater quality Best Management Practices (BMPs) and to ensure that these BMPs are properly maintained and pose no threat to public safety.

Within this Article, the term Stormwater Quality Facility shall mean BMPs that are implemented or constructed in order to comply with this Article.

(Code 2008, § 15-402)

15-403. INTERPRETATIONS. ¹⁶

In their interpretation and application, the provisions of this Article are hereby adopted as the minimum requirements for the promotion of the public health, safety, and general welfare. Whenever the requirements of this Article 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.

(Code 2008, § 15-403)

¹⁶ **Legal analysis: 15-403. INTERPRETATIONS.** Move this section to Article 1 as a general chapter provision; delete this and duplicate provisions in other articles.

15-404. RELATIONSHIP TO OTHER LAWS.

This Article 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; or as vacating or annulling any rights obtained by any Person by lawful action of the City, except as shall be expressly provided for in this Article.
(Code 2008, § 15-404)

15-405. DISCLAIMER OF LIABILITY.

The requirements set forth in this Article 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 post-Construction Stormwater Quality Facility or use of land, nor shall the acceptance of a preliminary or final Stormwater Quality Facility or the issuance of any City permit imply that the land uses permitted will be free from adverse impacts to Stormwater quality. This Article, 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.
(Code 2008, § 15-405)

15-406. APPLICABILITY.

The provisions of this Article shall extend and apply to all land within the corporate limits of the City, with the following conditions.

(a) The provisions of this Article shall apply to all activities that meet the definition of Development in Section 15-101, et seq., of the Code of the City of Westwood and disturb an area equal to or greater than one (1) acre in area, and shall also include projects of less than one (1) acre that are part of a larger common plan of Development or sale.

(b) Notwithstanding any other requirements of this Article, this Article shall not apply, unless superseded by state or federal regulation, to properties on which a preliminary plat has been approved by the Planning Commission prior to February 14, 2008, and a final plat containing a portion of that plat has been recorded in the Johnson County Office of Records and Tax Administration prior to February 14, 2009. If Public Improvement or Stormwater Management Permits are not obtained for all parts of the Development within two (2) years of the Final Plat approval, all requirements of this Article shall apply to all subsequent Construction permits, and Plats and Plans shall be revised accordingly.

This Article shall not apply to a site plan approved by the Planning Commission prior to February 14, 2008, and for which a building permit has been obtained and Construction begun prior to January 1, 2010. **17**

17 Legal analysis: 15-406. APPLICABILITY, subsection (b). If obsolete, delete.

(c) The provisions of this Article shall apply to City administered street Construction as directed by the Governing Body at the completion of preliminary plans and studies for these projects.

(Code 2008, § 15-406)

15-407. TECHNICAL SPECIFICATIONS AND DESIGN CRITERIA.

Unless specifically stated and amended by a formal written Policy Statement issued by the Director, all Stormwater Quality Facilities required or constructed within the City shall be designed and constructed in accordance with the latest edition of the Westwood Design Standards. In addition, there may be a reduced treatment requirement than is otherwise indicated on all developments that have a gross site area of less than five (5) acres and are otherwise subject to this Article. The Westwood Design Standards is hereby incorporated by reference into this Article.

If hydrologic or topographic conditions warrant greater control than provided by the minimum control requirements set forth in the Westwood Design Standards, the Director may impose additional requirements deemed necessary to control the Pollutants in Stormwater Runoff. It shall be unlawful for any Person to fail to comply with any additional requirements imposed by the Director as necessary to control the Pollutants.

(Code 2008, § 15-407)

15-408. SUBMITTAL OF STUDIES, PLANS, AND SPECIFICATIONS.

In accordance with the design criteria and this Article, the Applicant shall submit all preliminary and final studies, plans, and specifications prior to receiving a Stormwater Management Permit.

(Code 2008, § 15-408)

15-409. CERTIFICATION OF STUDIES, PLANS, AND SPECIFICATIONS.

Prior to commencing Construction of a Stormwater Quality Facility, a Professional Engineer shall submit a certification stating that the final Stormwater management studies, Construction plans, and specifications for Constructing required Stormwater Quality Facilities are in conformance with the standards, requirements, and specifications of this Article. The certifying Professional Engineer shall demonstrate conformance to the qualifications enumerated in the Westwood Design Standards. Certification shall be submitted prior to issuing a Stormwater Management Permit for improvements required by this Article. If the Director finds that a proposed Stormwater Quality Facility(ies) will not conform to accepted standards, the Director shall issue a written notice of disapproval.

(Code 2008, § 15-409)

15-410. STORMWATER MANAGEMENT PERMIT REQUIRED.

A Stormwater Management Permit shall be required for the Construction of all Stormwater Quality Facilities within the City. Upon acceptance of the final Stormwater management plan, Construction plans, and specifications, and payment of a fee to be set administratively by the City, the Applicant shall submit a copy of the contractor's bid proposal identifying the total Construction cost of the Stormwater Quality Facility to the

Director, who shall review the proposal and determine the amount required for performance and maintenance sureties. An application for the Stormwater Management Permit for facilities required by this Article shall be submitted to the Director with written documentation of the Performance and Maintenance Surety.

The Applicant shall post a performance and maintenance bond, cash escrow paid to an approved escrow agent, or letter of credit from a bank in the amount of one hundred twenty-five percent (125%) of the total construction cost of the facility. The surety shall contain forfeiture provisions for failure to complete work specified in the Stormwater management plan. The performance and maintenance escrow shall be released in full, after a three (3) year period following notice of acceptance of the Stormwater Quality Facility. Provisions for a partial pro-rata release of the performance security based on issuance of a Notice of Acceptance for the completed Stormwater Quality Facility may be done at the discretion of the Director. However, the remaining amount of the surety shall at no time be less than fifty percent (50%) of the actual construction cost of the Stormwater Quality Facility and shall be maintained until released by the Director following the three (3) year maintenance period.

Whenever necessary, the City may engage professionals necessary to administer the requirements of this enactment and the City's other stormwater ordinances and regulations. The City may, in its reasonable discretion, include the costs of such professionals as part of the requirements of a Stormwater Management Permit or other permits or requirements of the City, and such costs may be required to be paid by an applicant.

(Code 2008, § 15-410)

15-411. DEDICATED TRACTS AND EASEMENTS.

All Stormwater Quality Facilities shall be located in a separate tract dedicated for this purpose. If the Stormwater Quality Facility serves lands from only one lot and is located on the lot served, the facility may alternatively be located in an Easement dedicated for this purpose. In all cases, the tract or Easement shall include provisions for access from public Right of Way to the Stormwater Quality Facility by Landowners legally responsible for the Facility and/or the Director for periodic inspection and maintenance of the treatment facility. All tract and Easement uses and restrictions shall be binding on future Landowners on which the Stormwater Quality Facility is located, and all Easements or tracts shall be recorded by the Applicant in the land records.

(Code 2008, § 15-411)

15-412. ISSUANCE OF PERMIT.

Upon acceptance of the Applicant's assurances of performance and maintenance as provided in this Article and after all Easements have been dedicated, accepted, and recorded, the Director may issue a Stormwater Management Permit for facilities required by this Article. The permit shall set forth the terms and conditions of the approved Stormwater management plan.

(Code 2008, § 15-412)

15-413. REPAIRS DURING MAINTENANCE PERIOD.

During the three (3) year maintenance period following the date of completion and acceptance by the Director of the work embraced by this Article, the Permit Holder shall make all needed repairs arising out of defective workmanship or materials which, in the judgment of the Director or the certifying Professional Engineer, become necessary during the maintenance period. If within ten (10) days after the mailing of a written notice, the Permit Holder shall neglect to make or undertake with due diligence to make these repairs, the City is hereby authorized to make such repairs at the Permit Holder's expense; provided, however, that in case of an emergency where, in the judgment of the Director, a delay would cause serious loss, hazard, or damage, such repairs may be made without prior notice being sent to the Permit Holder, and the Permit Holder shall pay the cost thereof.

(Code 2008, § 15-413)

15-414. NOTICE OF ACCEPTANCE.

The Permit Holder shall notify the Director before beginning construction of any Stormwater Quality Facility. The Permit Holder shall keep the Director advised as to the progress of the work and any changes in the schedule.

Following completion of construction activities for the Stormwater Quality Facility, the Director will issue a Notice of Acceptance only upon submission of "as-built plans," as indicated herein, and written certification by a qualified Professional Engineer that the Stormwater Quality Facility has been installed in accordance with the approved plan and other applicable provisions of this Article.

(Code 2008, § 15-414)

15-415. AS-BUILT PLANS.

Prior to the Director issuing a written Notice of Acceptance, the Permit Holder shall submit an "as-built" or corrected plan showing in detail all construction changes from the approved plans and specifications, and furnish certification by a qualified Professional Engineer to the Director that the materials and construction of the Stormwater Quality Facility fully comply with the construction plans and specifications and the provisions and intent of this Article, and that the facility is fully functional.

(Code 2008, § 15-415)

15-416. FACILITY MAINTENANCE.

(a) Maintenance Agreement

(1) Prior to the issuance of a Stormwater Management Permit for property for which a Stormwater Quality Facility is required, the Landowner shall execute an inspection and maintenance agreement binding on all subsequent Landowners of land served by a Stormwater Quality Facility. Such agreement shall provide for access to the facility at reasonable times for regular or occasional inspections by the Director to ensure that the facility is maintained in proper working condition to meet design standards.

(2) The agreement shall be recorded by the applicant and/or Landowner in the land records of the County.

(3) The agreement shall also provide that if, after notice by the Director to correct a violation requiring maintenance work, satisfactory corrections are not made by the Landowner(s) within a reasonable period of time (30 days maximum), the City may perform all necessary work to place the facility in proper working condition. The Landowner(s) of the lands served by the facility, excluding public Right of Way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be proportioned to each Landowner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished by placing a special assessment on the property(ies), which may be placed on the tax bill and collected in the same manner as ordinary taxes.

(b) Maintenance Responsibility

(1) The Landowner of the property on which the Stormwater Quality Facility has been constructed pursuant to this Article, or any other Person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, Erosion and Sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.

(2) A maintenance schedule shall be developed for any Stormwater Quality Facility and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan, incorporated into the maintenance agreement, and shall be followed by subsequent responsible parties.

(3) Annual inspections of Stormwater Quality Facilities shall be an integral part of the maintenance plan and schedule and shall be conducted annually by a qualified Professional Engineer.

(Code 2008, § 15-416)

15-417. ANNUAL CERTIFICATION.

On or before the first (1st) day of October of each year, the Person responsible for maintaining each Stormwater Quality Facility shall furnish certification by a qualified Professional Engineer, as defined in the Westwood Design Standards, to the Director that the facility is working properly and that the scope and timing of the prescribed maintenance is being completed.

(Code 2008, § 15-417)

15-418. DISTURBANCE OF CONSTRUCTED FACILITIES.

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

(Code 2008, § 15-418)

~~**15-419. SEVERABILITY.**~~¹⁸

~~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 if it had known that such part or parts thereof would be declared invalid.
(Code 2008, § 15-419)~~

15-420. SAVINGS CLAUSE.¹⁹

Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Ordinance, nor be construed as affecting any of the provisions of these Ordinances 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, and all rights and obligations there under shall continue in full force and effect.
(Code 2008, § 15-420)

ARTICLE 5. STORM WATER UTILITY

(Reserved for Future Use)

¹⁸ **Legal analysis: 15-419. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.

¹⁹ **Legal analysis: 15-420. SAVINGS CLAUSE.** Move this to Article 1 as a general chapter provision; delete this section.