

ORDINANCE NO. 50-266

AN ORDINANCE AMENDING SECTIONS 16.32.010 AND 16.32.094 OF THE CODE OF THE CITY OF WICHITA, KANSAS, RELATING TO STORMWATER POLLUTION PREVENTION, REPEALING THE ORIGINALS OF SAID SECTIONS, AND ENACTING NEW SECTION 16.32.098.

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

SECTION 1. Section 16.32.010 of the Code of the City of Wichita is amended to read as follows:

Sec. 16.32.010. - General provisions.

A. *Purposes.* The purpose and objective of this chapter are as follows:

1. To maintain and improve the quality of surface water and groundwater within the city;
2. To attenuate the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the city;
3. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers of the city;
4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
5. To facilitate compliance with state and federal standards and permits by owners of industrial and construction sites within the city;
6. To enable the city to comply with all federal and state laws and regulations applicable to its NPDES permit for storm water discharges.

7. To regulate the management of storm water for purposes of public safety, welfare and quality of life;
8. To manage and maintain local floodplains; and,
9. To facilitate compliance with city standards and permits by owners of developed, redeveloped and undeveloped properties within the city.

B. *Administration.* Except as otherwise provided herein, the director, or his appointed representative, shall administer, implement, and enforce the provisions of this chapter.

C. *Authority.* The Director may develop additional policies, criteria, specifications and standards in a Storm Water Manual and/or in other policy, master plans, watershed plans or guidance documents as necessary to effectively implement the requirements of this chapter. The policies, criteria and requirements of the Storm Water Manual and/or other policy, plans or guidance documents may be implemented and amended by the Director, are referenced in this chapter when required, and shall be enforceable, consistent with the provisions contained in this chapter. A public meeting shall be held bi-annually to allow public comment on this chapter and the Storm Water Manual.

In the event that a violation of any provision of this chapter has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city may issue a Notice of Violation to the permittee, plan holder or property owner and/or any other person or entity having responsibility for the property or properties where the violation occurred under the provisions of subsection .100 B. of this chapter.

In the spirit of the purposes defined above for this chapter and in the administration of these requirements, the Director may consider the cost-effectiveness of storm water management controls provided that such controls meet the water quality, channel erosion protection and flood protection requirements of this chapter or are waived or exempted in accordance with the criteria defined in this chapter.

D *Regulatory or legal conflicts.* This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations, except as specifically noted in this chapter. However, where the provisions of this ordinance and another regulation conflict or overlap, that provision which is more restrictive or imposes higher standards or requirements shall prevail.

E. *Abbreviations.* The following abbreviations when used in this chapter shall have the designated meanings:

BMP	Best Management Practices
CFR	Code of Federal Regulations
CLOMR	Conditional Letter of Map Revision
EPA	U.S. Environmental Protection Agency
FEMA	Federal Emergency Management Agency
HHW	Hazardous Household Waste

KAR	Kansas Administrative Regulations
KSA	Kansas Statutes Annotated
LOMR	Letter of Map Revision
mg/l	Milligrams per liter
MS4	Municipal Separate Storm Sewer System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
OCI	Office of Central Inspection
PST	Petroleum Storage Tank
SWP3	Storm Water Pollution Prevention Plan
TMDL	Total Maximum Daily Load
USC	United States Code

F. *Definitions.* Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

1. *"As-built plan"* means a drawing showing the actual state of permanent storm water facilities as installed.
2. *"Best management practices (BMP)"* means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States or the city's MS4 and includes both temporary measures used during construction and permanent measures that are constructed in accordance with the provisions of this ordinance. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas. The BMPs required in this chapter will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.
3. *"City"* means the City of Wichita.
4. *"Commencement of construction"* means the disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
5. *"Commercial"* means pertaining to any business, trade, industry or other activity engaged in for profit.
6. *"Construction general permit"* refers to the Kansas General Permit for Storm water Discharges from Construction Sites.
7. *"Contractor"* means any person or firm performing construction work at a construction site, including any general contractor and subcontractors. Also

includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.

8. *"Development"* or *"new development"* means undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.
9. *"Director"* means the person appointed to the position of Public Works and Utilities Director by the City Manager of the City, or his/her duly authorized representative. Authorized representatives can include, but are not limited to, the City Engineer, the Storm Water Engineer, and others, as so authorized.
10. *"Discharge"* means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
11. *"Discharger"* means any person who causes, allows, permits, or is otherwise responsible for a discharge, including without limitation any owner of a construction site or industrial facility.
12. *"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 conveyances of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.
13. *"Drainage plan"* refers to the detailed water quantity and quality calculations and plan that are required for final plat approval or for issuance of a building permit.
14. *"Earthwork"* means the disturbance of soils on a site associated with clearing, grading, or excavation activities.
15. *"Environmental Protection Agency (EPA)"* means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.
16. *"Extremely hazardous substance"* means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.
17. *"Facility"* means any building, structure, installation, process, or activity from which there is or may be discharge of a pollutant.
18. *"Fertilizer"* means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential

plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

19. "*Final stabilization*" means the status when all soil disturbing activities at a site have been completed. This would establish a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (by employing riprap, gabions, or geotextiles).
20. "*Fire protection water*" means any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.
21. "*Garbage*" means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.
22. "*Harmful quantity*" means the amount of any substance that will cause a violation of a State Water Quality Standard or any adverse impact to the city's drainage system.
23. "*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.
24. "*Hazardous substance*" means any substance listed in Table 302.4 of 40 CFR Part 302.
25. "*Hazardous waste*" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
26. "*Hazardous waste treatment, disposal, and recovery facility*" means all contiguous land, and structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.
27. "*Impervious area*" or "*impervious cover*" means the number of square feet of hard surface areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and compacted dirt or graveled areas.

28. *"Individual building sites"* means and includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developing subdivision.
29. *"Industrial general permit."* See "Kansas General Permit for Storm water Discharges Associated with Industrial Activity."
30. *"Industrial waste"* means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.
31. *"Industry"* means and includes: (a) municipal landfills; (b) hazardous waste treatment, disposal, and recovery facilities; (c) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES storm water discharge permits due to their Standard Industrial Classification or narrative description; and (d) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of storm water discharges associated with industrial activity.
32. *"Kansas General Permit for Storm Water Discharges Associated with Industrial Activity (or industrial general permit)"* means the industrial general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
33. *"Kansas General Permit for Storm Water Discharges from Construction Sites (or construction general permit)"* means the construction general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.
34. *"Land disturbance"* means the disturbance of soils on a site associated with clearing, grading, excavation, new development or redevelopment activities.
35. *"Landfill"* means an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, or an injection well.
36. *"Municipal separate storm sewer system (MS4)"* means the system of conveyances, (including roads with drainage systems, municipal 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 storm water, and which is not used for collecting or conveying sewage.
37. *"Municipal solid waste"* means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

38. "NPDES permit" means for the purpose of this chapter, this is a permit issued by EPA or the state of Kansas that authorizes the discharge of storm water pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis
39. "Nonpoint source" means the source of any discharge of a pollutant that is not a point source.
40. "Notice of intent (NOI)" means the notice of intent that is required by either the industrial general permit or the construction general permit.
41. "Notice of termination (NOT)" means the notice of termination that is required by either the industrial general permit or the construction general permit.
42. "Notice of violation" means a written notice provided to the owner or contractor detailing any violations of this chapter and any clean-up action expected of the violators.
43. "OCI" means office of central inspection and includes its superintendent and his or her authorized representatives.
44. "Offsite BMP program" is a voluntary storm water quality compliance program offered to existing property, new development and redevelopment that requires payment to the city of a monthly service fee instead of implementation of the on-site BMPs that would otherwise be required to be constructed and maintained to comply with Section 16.32.091 of this Chapter.
45. "Offsite BMP program fee" means a fee of \$19 per year for each permitted acre of property registered in the offsite BMP program, as authorized by this Chapter pursuant to Charter Ordinance 147 and K.S.A. 12-137, which fee has been established to pay or reimburse capital expenditures, maintenance costs, program administrative costs, discount rate and design life costs associated with the offsite BMP program.
- ~~44~~6. "Oil" means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.
- ~~45~~7. "Outfall" or "storm water outfall" means the terminus of the storm water system for a development or redevelopment where the storm water runoff is released into a larger public or private storm water management system, or into a stream, waters of the United States or other water body.
- ~~46~~8. "Owner" means the person who owns a facility, part of a facility, or land.

479. "*Person*" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local government entities.
4850. "*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, defoliant, or desiccant.
4951. "*Petroleum product*" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.
502. "*Petroleum storage tank (PST)*" means any one or combination of aboveground or underground storage tanks that contain petroleum product and any connecting underground pipes.
513. "*Point source*" means any discernable, confined, and discrete conveyance including, but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.
524. "*Pollutant*" means dredged spoil, spoil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, used motor oil, anti-freeze, litter, and industrial, municipal, and agricultural waste discharged into water and/or any substance, debris, matter that may be carried downstream by storm water runoff, and/or any substance or matter that may be dissolved in storm water runoff.
535. "*Pollution*" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
546. "*Qualified personnel*" means persons who possess the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.

- ~~55~~7. "*Redevelopment*" or "*redevelopment site*" means a change to previously existing improved property, including but not limited to the demolition or building structures, filling, grading, paving, or excavating.
- ~~56~~8. "*Release*" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.
- ~~57~~9. "*Reportable quantity (RQ)*" means, for any hazardous substance, the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any extremely hazardous substance, the quantity established in 40 CFR Part 355.
- ~~58~~60. "*Rubbish*" means nonputrescible solid waste, excluding ashes, that consist of: (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including grass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit).
- ~~59~~61. "*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 the city sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).
- ~~60~~2. "*Septic tank waste*" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- ~~61~~3. "*Service station*" means any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from pumps.
- ~~62~~4. "*Sewage*" means the domestic sewage and/or industrial waste that is discharged into the city sanitary sewer system and passes through the sanitary sewer system to the city sewage treatment plant for treatment.
- ~~63~~5. "*Site*" means the land or water area where development or redevelopment is physically located or being conducted, including lands adjacent to the development that is not subject to land disturbing activities but that is used as a staging area or for other uses in connection with the new development or redevelopment.
- ~~64~~6. "*Solid waste*" means any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material including: solid, liquid, semi-solid, or contained gaseous

material resulting from industrial, municipal, commercial, mining, agricultural operations, and community and institutional activities.

~~65~~7. "*State*" means the state of Kansas.

~~66~~8. "*Storm water*" means storm water runoff, snow melt runoff, and surface runoff and drainage.

~~67~~9. "*Storm water discharge associated with industrial activity*" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is listed as one of the categories of facilities in 40 CFR Section 122.26(b)(14), and which is not excluded from EPA's definition of the same term.

~~68~~70. "*Storm water management facility*" or "*storm water control*" means any structure or installation used to manage storm water quality, flow rate, or volume.

~~69~~71. "*Storm Water Manual*" refers to the latest version, as amended, of the document on file with the Director of Public Works entitled City of Wichita/Sedgwick County Storm Water Manual.

~~70~~2. "*Storm water pollution prevention plan (SWP3)*." Means a plan required by an NPDES storm water permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity.

~~71~~3. "*Subdivision development*" means and includes activities associated with the platting of any parcel of land into two or more lots and includes all construction taking place thereon.

~~72~~4. "*Undisturbed property*" means real property which has not been altered from its natural condition so that the entrance of water into the soil mantle is prevented or retarded through changes to the topography or soils.

~~73~~5. "*Used oil (or used motor oil)*" means any oil that has been refined from crude oil a synthetic oil that, as a result of use, storage, or handling; has become unsuitable for its original purpose because of impurities or the loss of original properties.

~~74~~6. "*Water of the state (or water)*" means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that

are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

757. "*Water quality standard*" means the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses.

768. "*Waters of the United States*" means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any water within the federal definition of "waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

779. "*Watershed*" means the cumulative area that drains to a common point.

780. "*Watershed plan*" means an engineering and planning study for the drainage system and/or land areas of a watershed that may include a plan for storm water management in the watershed. Watershed plans can include, but are not limited to, the analysis of flooding problems, water quality problems, potential storm water capital improvements, land use patterns, and regulatory issues for existing and potential future land use conditions and address solutions to these problems.

7981. "*Wetland*" means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

802. "*Yard waste*" means leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

SECTION 2. Section 16.32.094 of the Code of the City of Wichita is amended to read as follows:

Sec. 16.32.094. - Waivers and exemptions from storm water management standards for new developments

A. *Exemptions.* Owners of properties where the following activities are undertaken are exempt from the requirements of sections 16.32.091, 16.32.092, 16.32.093 and 16.32.094 of this chapter.

1. Minor land disturbing activities at individual locations, such as gardening, building or grounds maintenance and landscaping, provided that the activity does not result in equal to or greater than one (1) acre of land disturbance;
 2. Individual utility service connections, unless such activity is carried-out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by regulation;
 3. Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by the regulation;
 4. Installation of posts or poles;
 5. Farming activities;
 6. Unplanned emergency work and emergency repairs necessary to protect life or property.
- B. *Waivers.* All or some of the storm water management standards required in section 16.32.091 and/or 16.32.092 of this chapter may be waived by the Director under the following circumstances.
1. *Existing Downstream Facilities.* A waiver may be provided for one or more storm water management standards if the waived standard(s) are met by discharging the storm water runoff to an existing storm water management facility, whether public or private, that is:
 - i. provided in accordance with an existing watershed plan that is approved by the city; and,
 - ii. already in existence, or will be in existence at the time of construction of the new development or redevelopment; and,
 - iii. designed, constructed and maintained to provide a level of storm water control that is equal or greater than that which would be afforded by on-site storm water management facilities.
 - iv. If a waiver is provided for this reason, the owner of the new development or redevelopment will be required to pay a fee in-lieu-of water quality control, downstream channel stabilization and peak discharge control, in an amount to be determined by the city in accordance with an adopted in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the new development or redevelopment.
 2. *Adverse Impact.* A waiver may be provided if engineering studies determine that installing a storm water management facility in order to meet the storm water management standard being considered for waiver will cause adverse impact to water quality, or cause increased channel erosion, or downstream flooding.
 3. *Technical Criterion.* A waiver may be provided if the technical criterion required to waive the storm water management standard, as presented in the Storm Water Manual, is met. In

any case, a waiver is subject to satisfaction of the following requirements, which shall be shown in drainage plans submitted for the new development or redevelopment:

- ia. the waiver applicant shall provide an engineering study, as defined in 16.32.094.C that proves the adequacy of downstream or shared off-site storm water management facilities to offer equivalent or greater protection than the standard(s) for which a waiver is requested; and,
- ib. the waiver applicant obtains any necessary CLOMR prior to construction, and a LOMR upon completion of construction; and,
- ic. the waiver applicant obtains all State and Federal permits that may be applicable to the site.

4. Offsite BMP program participation. A waiver of the requirements of section 16.32.091 will be provided for all areas of new development, redevelopment or existing developed property: a) that are registered as participating in the City of Wichita offsite BMP program to offset water quality impacts from the development or redevelopment; and b) for which offsite BMP program fees have been paid when due.

Owner(s) of new development, redevelopment or existing developed property that wish to register all, or portions, of their property for participation in the offsite BMP program shall indicate this intent in the drainage plan as indicated in the Storm Water Manual. Approval of the plan by the Director shall serve as the registration of the property, or portions thereof, in the offsite BMP program.

In the event that an owner chooses to terminate the registration for a property, or if BMP program fees for a registered property become more than six months delinquent, and are not paid by the owner within thirty (30) days following notice by the City, the waiver provided by this subsection shall lapse, and the City may require the owner to construct and maintain the on-site BMPs that would have been required to comply with Section 16.32.091 of this Chapter had a waiver never been effective.

- C. *Engineering study required.* In the event that a waiver from storm water management control requirements is requested, the adequacy of downstream or shared off-site storm water management facilities to control storm water runoff shall be determined, reviewed and approved by an engineering study that is performed in accordance with the calculation methods presented in the Storm Water Manual. The engineering studies shall be performed at the expense of the owner(s) of the proposed new development or redevelopment, unless a study has already been or is being performed by the city as part of a watershed plan or other land use plan.

SECTION 3. The previous versions of Sections 16.32.010 and 16.32.094, as they hitherto existed, are hereby repealed.

SECTION 4. New Section 16.32.098 is hereby enacted, to read as follows:

Sec. 16.32.098. – Provisions for the offsite BMP program.

Owner(s) of properties registered in the City of Wichita offsite BMP program are subject to the following requirements.

- A. *Offsite BMP program fee established.* Subject to the provisions of this chapter, there is imposed on each and every property, or portion of property registered in the City of Wichita offsite BMP program, an offsite BMP program fee. The fee shall be assessed at a yearly rate of \$19 per acre on the permitted area of the registered property. The fee shall remain in effect for the property as long as the property remains registered in the City of Wichita offsite BMP program.
- B. *Fee collection.* The offsite BMP program fee shall be billed and collected concurrently with the sewer utility bill, as part of a consolidated statement for utility customers which shall be paid by a single payment. In the event that a partial payment is received, the payment shall be applied to the water and sewer portion of the account first, then to the drainage fee portion of the account and then to the offsite BMP program fee portion of the account. Unless otherwise provided for herein, all bills for the offsite BMP program fee shall become due and payable in accordance with sections of the code of the city and with rules and regulations that pertain to the Wichita water and sewer utility that relates to the collection of utility charges. The offsite BMP program fees for any given property shall initially be the responsibility of the person who is paying for water and/or sewer service for the property (the “customer”). If the property is not using water and/or sewer services, then the offsite BMP program fees shall be the responsibility of the person in possession of the property, unless other arrangements are made. If no person is in possession of the property, then the offsite BMP program fees shall be the responsibility of the property owner. In all cases, the property owner shall be ultimately responsible for the offsite BMP program fees not paid by the customer or occupant.
- C. *Penalties for late payment or non-payment.* Offsite BMP program fees shall be subject to a penalty for late payment which is the same as that imposed for late payment of water and sewer utility charges. In addition to any other remedies or penalties provided by this chapter or any other ordinance of the city, failure of any of the person(s) designated in subsection B above to pay such charges promptly when due shall subject such person(s) to discontinuance of water services and the city manager of the city, or the city manager's designee, is empowered and directed to enforce this provision as to any and all delinquent users in accordance with provision set forth in Chapter 17.12. Users shall be entitled to notice and shall have the right to a hearing in accordance with Chapter 17.12 before such users' water service is discontinued for failure to pay drainage fees.

Offsite BMP program fees authorized to be charged in this chapter when delinquent may be certified by the clerk of the city to the county clerk of Sedgwick County to be placed on the tax roll for collection, subject to the same penalties and to be collected in like manner as other taxes, and such charges shall, thereafter, constitute a lien upon the real estate served by the stormwater utility and against which such charges were made, regardless of whether the offsite BMP program fees were incurred when a property owner was in possession of the property or a non-owner was in possession of the property. Further, in the event that BMP program fees remain unpaid for the period referenced in Section 16.32.094(B)(4), the City may require the property owner to construct and maintain on-site BMPs as therein provided.

SECTION 5. Pursuant to K.S.A. 12-137, this ordinance shall be published once each week for two consecutive weeks in the official City newspaper, and shall become effective sixty (60) days after its final publication; provided, however, that if within sixty (60) days of its final publication a petition signed by a number of electors of the City equal to not less than ten percent (10%) of the number of electors who voted at the last preceding regular city election shall be filed with the county election officer, demanding that such ordinance be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

ADOPTED at Wichita, Kansas, this 21st day of June, 2016, with not less than 2/3 of the members elect of the Governing Body voting in favor.

Jeff Longwell, Mayor
City of Wichita

ATTEST:

Karen Sublett,
City Clerk

Approved as to Form:

Jennifer Magaña, City Attorney and
Director of Law