

**CITY OF WALTON, KENTUCKY
ORDINANCE NO. 2019-02**

**AN ORDINANCE OF THE CITY OF WALTON, KENTUCKY,
ADOPTING THE CITY'S POST-CONSTRUCTION STORMWATER
MANAGEMENT IN NEW DEVELOPMENT AND
REDEVELOPMENT ORDINANCE IN ORDER TO ESTABLISH
MINIMUM REQUIREMENTS AND PROCEDURES TO CONTROL
THE ADVERSE EFFECTS OF INCREASED POST-
CONSTRUCTION STORMWATER RUNOFF AND NON-POINT
SOURCE POLLUTION ASSOCIATED WITH NEW
DEVELOPMENT AND REDEVELOPMENT IN FURTHERANCE
OF THE CITY'S CONTINUING EFFORTS TO KEEP THE CITY'S
STORMWATER MANAGEMENT PRACTICES IN
COMPLIANCE WITH STATE AND FEDERAL LAW.**

WHEREAS, the Kentucky Division of Water has required that the City of Walton start a Municipal Separate Storm Sewer System program, otherwise known as an MS4; and

WHEREAS, the City of Walton now wishes to create regulations and to establish minimum requirements and procedures to control the adverse effects of increased post-construction storm water runoff and non-point source pollution associated with new development and redevelopment in furtherance of the City's continuing efforts to keep the City's stormwater management practices in compliance with state and federal law and to manage and protect the quality of our lakes and creeks.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALTON, KENTUCKY AS FOLLOWS:

SECTION ONE

New CHAPTER 53 of the City of Walton Code of Ordinances is hereby created as follows:

§ 53.02 PURPOSE AND INTENT.

The purpose of this chapter is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-construction storm water runoff and non-point source pollution associated with new development and redevelopment. It has been determined that proper management of construction-related and post-construction storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, protect water and aquatic resources and establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this chapter are:

(A) Establishing decision-making processes for development that protects the integrity of watersheds and preserve the health of water resources;

(B) Minimizing changes to the pre-development hydrologic response for new development and redevelopment in their post-construction state in accordance with the requirements of this chapter for the applicable design storm in order to reduce flooding, stream bank erosion, and non-point and point source pollution, as well as to maintain the integrity of stream channels, aquatic habitats and healthy stream temperatures;

(C) Establishing minimum post-construction storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality;

(D) Establishing design and review criteria for the construction, function, and use of structural storm water control facilities that may be used to meet the minimum post-construction storm water management standards;

(E) Establishing criteria for the use of better management and site design practices, such as the preservation of green space and other conservation areas;

(F) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural storm water best management practices (BMPs) to ensure that they continue to function as designed, are maintained appropriately, and pose minimum risk to public safety; and

(G) Establishing administrative procedures for the submission, review, approval and disapproval of storm water management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

§ 53.04 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ADMINISTRATIVE MANUAL. A manual developed by the Code Enforcement Board and distributed to the public to provide information for the effective administration of this chapter, including but not limited to the following documents:

(1) Application/certification for storm water management and construction erosion and sediment control.

(2) Stormwater process and fee schedule for construction erosion/sediment control plan review and inspection.

(3) Construction storm water pollution prevention plan (SWPPP) template.
BEST MANAGEMENT PRACTICES (BMPS). 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.

BUFFER. A natural or vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.

BUFFER WIDTHS. Viewed aerially, the stream buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

BUFFER ZONES. Areas of the buffer with varying widths, uses and vegetative targets.

BUILT-UPON AREA (BUA). That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis

courts. **BUILT-UPON AREA** does not include a wooden slatted deck or the water area of a swimming pool.

CODE ENFORCEMENT BOARD. The Union/Walton Joint Code Enforcement Board or any duly authorized enforcement agency, officer or designee.

DESIGN MANUAL. The City of Walton storm water Design Manual referenced herein shall refer to the Northern Kentucky Regional Storm Water Management Rules and Regulations and the Sanitation District 1 - Storm Water Best Management Practices Manual as the City of Stormwater Design Manual.

DEVELOPMENT. New development created by the addition of built upon area to land void of built upon area as of the effective date of this chapter.

DISTURBANCE. Any use of the land by any person or entity which results in a change in the natural cover or topography of the land.

DRAINAGE AREA. That area of land that drains to a common point on a project site.

DRAINAGE WAY. Any channel that conveys surface runoff within a site.

FLOODPLAIN. The low, periodically-flooded lands adjacent to streams. For land use planning purposes, the regulatory floodplain is usually viewed as all lands that would be inundated by the Regulatory Flood.

KDOW. The Kentucky Division of Water.

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES)

STORM WATER DISCHARGE PERMIT. A permit issued by the Kentucky Division of Water (KDOW) under delegated authority by the United States Environmental Protection Agency (USEPA) pursuant to 33 USC 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.

LARGER COMMON PLAN OF DEVELOPMENT OR SALE. Any contiguous area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to public notice or hearing, drawing, permit application, zoning request, or site design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

LOT MEASUREMENT AND COMPUTATION. Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

LOW IMPACT DEVELOPMENT (LID). The integration of site ecology and environmental goals and requirements into all phases of urban planning and design from the individual residential lot level to the entire watershed.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A conveyance, or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains designed or used for collecting or conveying stormwater to the waters of the United States. Sanitary and combined sewers are not included in the definition of the MS4 municipal separate storm sewer system.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT. A permit issued by EPA (or by a state under authority delegated pursuant to 33 USC § 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.

NON-POINT SOURCE (NPS) POLLUTION. Forms of pollution caused by sediment, nutrients, organic and toxic substances originating from land use activities and carried to lakes and streams by surface runoff.

OWNER. The legal or beneficial owner of land, including but not limited to a fee owner, mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. **OWNER** shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of **OWNER** under another description in this definition, such as a management entity.

PERSON(S). Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

POLLUTANT. Anything which causes or contributes to pollution. **POLLUTANTS** may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

REDEVELOPMENT. Rebuilding activities on portions of land containing built-upon area as of the effective date of this chapter.

STAGE I: DEVELOPMENT PLAN REQUIREMENTS. The initial stage development planning that creates the concept of the proposed development on a map drawn to a scale not smaller than one equals 100 feet and provides information as detailed and illustrated in the Zoning Ordinance.

STAGE II: DEVELOPMENT PLAN REQUIREMENTS. The preparation of detailed plans that show all of the facilities and information needed to construct the development by producing plan drawn to a scale of not smaller than one inch equals 100 feet and provides the information as detailed and illustrated in the Zoning Ordinance.

STORMWATER MANAGEMENT PERMIT. A permit required for all development and redevelopment unless exempt pursuant to this chapter, which demonstrates compliance with this chapter.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP). A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

TOTAL SUSPENDED SOLIDS (TSS). Total suspended matter in water which includes particles collected on a filter with a pore size of two microns as measured by Standard Method 2540-D, which is commonly expressed as a concentration in terms of milligrams per liter (mg/l) or parts per million (ppm).

WATERCOURSE. Any open drainageway, including, but not limited to lakes, ponds, rivers, streams, and bodies of water owned or maintained by the City of Walton.

WATERWAY. A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 53.06 APPLICABILITY.

The requirements of this section shall apply to all developments and redevelopments within the corporate limits as follow:

(A) General.

(1) Major site plans, major subdivisions and conditional use plans submitted and accepted for review;

(2) Zoning use application submitted and accepted for review for uses that do not require a building permit;

(3) Certificate of occupancy issued by the proper governmental authority;

(4) Valid building permit issued pursuant to so long as the permit remains valid, unexpired, and unrevoked;

(B) Exemptions.

(1) This section applies to the exemptions of developments and redevelopments within the corporate limits as follows below.

(2) The requirements of this section shall not apply within the corporate limits with respect to the following types of development or redevelopment activities:

(a) Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this chapter. However, developments that are less than one acre must follow the City of Walton subdivision regulations;

(b) Redevelopment or expansion that cumulatively disturbs less than one acre and is not part of a larger plan of development or sale is exempt from the provisions of this chapter;

(c) Redevelopment or expansion that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development is exempt from the provisions of this chapter; and

(d) Activities exempt from permit requirements of Section 404 of the Federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this chapter.

(C) No development or redevelopment until compliance and permit. No development or redevelopment shall occur except in compliance with the provisions of this chapter or unless exempted. No development for which a permit is required pursuant to this chapter shall occur except in compliance with the provisions, conditions, and limitations of the permit.

§ 53.08 RESPONSIBILITIES FOR ADMINISTRATION AND RIGHT OF ACCESS.

The Code Enforcement Board or duly authorized designee shall administer and implement the provisions of this chapter and enforced by Code Enforcement Board. Any powers granted or duties imposed upon the Code Enforcement Board may be delegated to persons or entities acting in the beneficial interest of or in the employ of the Code Enforcement Board:

(A) Every person who improves land or changes the contour of land in any manner shall be responsible for the protection against erosion; and for reestablishing permanent ground cover.

(B) Every such person shall be responsible for the cleaning of City streets, storm and sanitary sewers, and open channels on private land in or upon which soil or other matter has been deposited from such lands.

(C) Before any land disturbing activity, or before any building or structure is demolished, erected, constructed or reconstructed, every person proposing such development shall present an erosion and sediment control plan (storm water pollution prevention plan - SWPPP) for protection of the site against erosion and for reestablishing permanent ground cover. The plan shall be submitted to the Code Enforcement Board for review and approval

as part of the demolition permit or building permit submittal. A demolition permit or a building permit shall not be issued to such person prior to approval of the erosion and sediment control plan.

(D) No erosion and sediment control plan is required for the following activities:

(1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources; and

(2) Existing nursery and agricultural operations conducted as a main or accessory use.

(E) The City shall be permitted to enter and inspect lands and facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter.

(F) In addition to all other remedies, and after such time as the codes administrator shall have determined a failure of a developer or builder to comply with this section, the codes administrator may institute an injunction, mandamus, or appropriate action or proceeding in any court of competent jurisdiction to prevent the work or occupancy of such building, structure or land.

§ 53.10 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

§ 53.12 DESIGN MANUAL.

(A) *Reference to Design Manual.*

(1) The Code Enforcement Board shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about storm water management permits and about the design, implementation and performance of structural and non-structural storm water BMPs.

(2) The Design Manual includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. Storm water treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of this chapter and the phase II laws. Failure to construct storm water treatment practices in accordance with these criteria may subject the violator to a civil penalty as described in § 53.42.

(B) *Relationship of design manual to other laws and regulations.* If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

(C) Changes to standards and specifications standards, specifications, guidelines, policies, criteria, or other information in the Design Manual in affect at the time of acceptance of a complete application shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

(D) *Amendments to Design Manual.*

(1) The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

(2) Prior to amending or updating the Design Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

§ 53.14 RELATIONSHIP TO OTHER LAW, REGULATIONS AND PRIVATE AGREEMENTS.

(A) *Conflict of Laws.* This chapter is not intended to modify or repeal any other chapter, rule, regulation or other provision of law. The requirements of this chapter are in addition to the requirements of any other chapter, rule, regulation or other provision of law, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

(B) *Private Agreements.* This chapter is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this chapter shall govern. Nothing in this chapter shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this chapter. In no case shall the City of Walton be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

§ 53.16 APPLICATIONS FOR REVIEW AND APPROVAL.

(A) *Permit application required.* A storm water management permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted, reviewed and approved permit application, pursuant to this chapter and pursuant to the City of Walton Administrative Manual, the City of Walton Design Manual and Development plan requirements from the City of Walton Zoning Regulations. The content and form of the permit shall be established by the Code Enforcement Board.

(B) *Stage I plan development requirements.*

(1) Before a storm water management permit application is submitted, the Code Enforcement Board or the land owner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner may request consultation(s) on a concept plan for the post-construction storm water management system to be utilized in the proposed development project. This consultation meeting(s) should take place at the time of the preliminary plan of the subdivision or other early step in the development process. The purpose of this meeting(s) is to discuss the post-construction storm water management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to storm water management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans may be consulted in the discussion of the concept plan.

(2) At the time of concept plan submittal, the following information should be included in the concept plan, which should be submitted in advance of the meeting as specified in the Administrative Manual:

(a) *Existing Conditions/Proposed Site Plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation and proposed limits of clearing and grading;

proposed open space area; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(b) *Natural resources inventory.* A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic system setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

(c) *Storm water management system concept plan.* A written or graphic concept plan of the proposed post-construction storm water management system including: preliminary selection and location of proposed structural storm water controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of proposed open space areas; location of all floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

(C) *Stage II plan development requirements.*

(1) The storm water management permit application shall detail how post-construction storm water runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance. All such plans submitted with the application shall be prepared by a registered Kentucky professional engineer or landscape architect. The engineer or landscape architect shall perform services only in their area of competence, and shall verify that the design of all storm water management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.

(2) The submittal shall include all of the information required in the submittal checklist established by the Code Enforcement Board.

(D) *Record drawing (as-built) plans and final approval.*

(1) The applicant shall certify that the completed project is in accordance with the approved storm water management plans and designs, and shall submit actual "as-built" plans for all storm water management facilities or practices after final construction is completed. Failure to provide approved as-built plans within the time frame specified by the Code Enforcement Board may result in assessment of penalties as specified in § 53.56, Enforcement and Penalties. At the discretion of the Code Enforcement Board, performance securities or bonds may be required for storm water management facilities or practices until as-built plans are approved.

(2) As-built plans shall show the final design specifications for all storm water management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the storm water management measures and plans shall certify, under seal, that the as-built storm water measures, controls, and devices are in compliance with the approved storm water management plans and designs and with the requirements of this chapter.

(3) Final as-built plans and a final inspection and approval by the Code Enforcement Board are required before a project is determined to be in compliance with this chapter. At the discretion of the Code Enforcement Board, certificates of occupancy may be withheld

pending receipt of as-built plans and the completion of a final inspection and approval of a project.

(E) Establishment of application requirements, schedule, and fees.

(1) Application contents and form. The Code Enforcement Board shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the storm water management permit application shall describe in detail how post-construction storm water runoff will be controlled and managed, the design of all storm water facilities and practices, and how the proposed project will meet the requirements of this chapter.

(2) Submission schedule. The Code Enforcement Board shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(3) Permit review fees. The City of Walton shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) Administrative manual. For applications required under this chapter, the Code Enforcement Board shall compile into a Design Manual the application requirements, submittal checklist, submission schedule, fee schedule, maintenance agreements, a copy of this chapter, and where to obtain the Design Manual, as well as other information and materials necessary for the effective administration of this chapter. This Administrative Manual shall be made available to the public.

(F) Review.

(1) Within 30 working days after a complete application is submitted, the Code Enforcement Board shall review the application and determine whether the application complies with the standards of this chapter.

(2) Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and Federal authorities.

(a) Approval. If the Code Enforcement Board finds that the application complies with the standards of this chapter, the Code Enforcement Board shall approve the application and issue a storm water management permit to the applicant. The Code Enforcement Board may impose conditions of approval as needed to ensure compliance with this chapter. The conditions shall be included in the permit as part of the approval.

(b) Fails to comply. If the Code Enforcement Board finds that the application fails to comply with the standards of this chapter, the Code Enforcement Board shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(c) Revision and subsequent review.

1. A complete revised application shall be reviewed by the Code Enforcement Board within 30 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

2. If a revised application is not re-submitted within 60 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.

(d) Time limit/expiration.

1. A Storm Water Management Permit and accompanying plan approved.

2. Under the provisions of this chapter shall remain valid for a period of three years from the date of approval. If no work on the site in furtherance of the plan has commenced within the three-year period, the permit and plan approval will become null and void and a new application will be required to develop the site. If work on the site in furtherance of the plan has commenced that involves any utility installations or street improvements except grading, the permit and plan shall remain valid and in force and the project may be completed in accordance with the approved plan.

§ 53.18 APPEALS.

(A) Right of appeal. Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance may file an appeal to the Code Enforcement Board within seven (7) days pursuant to Section 34.47(F) and 34.71(F) of the Walton code of Ordinances.

(B) Filing of appeal and procedures. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal. The Code Enforcement Board shall forthwith transmit documents constituting the record on which the decision appealed from was taken.

§ 53.20 DEED RECORDATION AND INDICATIONS ON PLAT.

The approval of the storm water management permit shall require an enforceable restriction on property usage that runs with the land, such as plat, recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. Streams and buffer boundaries including the delineation of each buffer zone must be specified on all surveys and record plats. The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the Boone and/or Kenton County Clerk's Office upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Boone and/or County Clerk's Office so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. A copy of the recorded maintenance agreement shall be provided to the Code Enforcement Board within 14 days following receipt of the recorded document. A maintenance easement shall be recorded for every structural BMP to allow sufficient access for adequate maintenance. The specific recordation and deed restriction requirements as well as notes to be displayed on final plats and deeds shall be contained in the Design Manual.

§ 53.22 DEDICATION OF BMPS, FACILITIES AND IMPROVEMENTS.

The City will not accept dedication of any existing or future storm water management facility for maintenance, but may, in its discretion to promote safety and health, and provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. Procedures for acceptance of BMPS are provided in the Administrative Manual.

§ 53.24 VARIANCES.

(A) Any person may petition the City for a variance granting permission to use the person's land in a manner otherwise prohibited by this chapter. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this chapter.

(2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(3) The hardships did not result from actions taken by the petitioner.

(4) The requested variance is consistent with the spirit, purpose, and intent of this chapter; will secure public safety and welfare; and will preserve substantial justice.

(B) The City may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

§ 53.26 GENERAL STANDARDS FOR MAINTENANCE.

(A) *Function of BMPs as intended.* The owner of a structural BMP installed pursuant to this chapter shall maintain and operate the BMP so as to preserve and continue its function in controlling storm water quality and quantity at the degree or amount of function for which the structural BMP was designed.

(B) *Annual maintenance inspection and report.* The person responsible for maintenance of any BMP installed pursuant to this ordinance shall submit to the Code Enforcement Board an inspection report from a qualified registered Kentucky professional engineer or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

(1) The name and address of the land owner;

(2) The recorded book and page number of the lot of each structural BMP;

(3) A statement that an inspection was made of all structural BMPs;

(4) The date the inspection was made;

(5) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this chapter; and

(6) The original signature and seal of the engineer, surveyor, or landscape architect. All inspection reports shall be on forms supplied by the Code Enforcement Board that are contained in the Administrative Manual. An original inspection report shall be provided to the Code Enforcement Board beginning one year from the date of as-built certification and each year thereafter on or before the anniversary date of the as-built certification.

§ 53.28 OPERATION AND MAINTENANCE AGREEMENT.

(A) *General.*

(1) At the time that as-built plans are provided to the Code Enforcement Board as described in § 53.16(D) and prior to final approval of a project for compliance with this chapter, but in all cases prior to placing the BMPs in service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Failure to execute an operation and maintenance agreement within the time frame specified by the Code Enforcement Board may result in assessment of penalties as specified in § 53.56, enforcement and penalties. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. At the discretion of the Code Enforcement Board, certificates of occupancy may be withheld pending receipt of an operation and maintenance agreement.

(2) The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the City a right of entry in the event that the Code Enforcement Board has reason to believe it

has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the City to assume responsibility for the structural BMP.

(3) Standard operation and maintenance agreements for BMPs shall be developed by the Code Enforcement Board and made available in the Design Manual. The operation and maintenance agreement must be approved by the Code Enforcement Board prior to plan approval, and it shall be referenced on the final plat and shall be recorded by the applicant or owner with the Boone and/or Kenton County Clerk's Office where the Deeds are lodged for record upon final plat approval as described in § 53.20. A copy of the recorded maintenance agreement shall be given to the Code Enforcement Board within 14 days following its recordation.

(B) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this chapter that are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include the provisions described in the Design Manual.

§ 53.30 INSPECTION PROGRAM.

(A) Inspections and inspection programs by the City of Walton may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

(B) If the owner or occupant of any property refuses to permit such inspection, the Code Enforcement Board shall proceed to obtain an administrative search warrant pursuant if necessary. No person shall obstruct, hamper or interfere with the Code Enforcement Board while carrying out his or her official duties.

§ 53.32 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE.

The City may require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in accordance with the provisions contained in the Design Manual.

§ 53.34 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Code Enforcement Board.

§ 53.36 NUISANCE.

The owner of each BMP, whether structural or non-structural, shall maintain it so as not to create a nuisance condition.

§ 53.38 MAINTENANCE EASEMENT.

Every structural BMP installed pursuant to this chapter shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement. The easement shall be recorded as described in § 53.22 and its terms shall specify who may make use of the easement and for what purposes.

§ 53.40 APPEAL OF NOTICE OF VIOLATION.

Any person receiving a notice of violation may appeal the determination of the Code Enforcement Board's agent and/or designee pursuant to Section 34.47(F) and 34.71(F) of the Walton code of Ordinances and all amendments thereto.

§ 53.42 ENFORCEMENT MEASURES AFTER APPEAL.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within three days of the decision of the Code Enforcement Board, shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Code Enforcement Board or designated contractor to enter upon the premises for the purposes set forth above.

§ 53.44 COST OF ABATEMENT OF THE VIOLATION.

(A) Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(B) Any person violating any of the provisions of this section shall become liable to the City by reason of such violation with all collection set forth in Section 34.47(F) and 34.71(F) of the Walton code of Ordinances and any amendments thereto.

§ 53.46 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter, if a person has violated or continues to violate the provisions of this ordinance, the Code Enforcement Board may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 53.48 COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter. The Code Enforcement Board may impose upon violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

§ 53.50 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 53.52 CRIMINAL PROSECUTION.

(A) Any person that has violated or continues to violate this chapter may be referred for criminal prosecution subject to a criminal penalty of \$1,000 dollars per violation per day

and/or imprisonment for a period of time not to exceed 30 days. Said Criminal Prosecution shall only be sought after a minimum of two civil offenses as set forth herein.

(B) The Code Enforcement Board may recover all attorney fees court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

§ 53.54 REMEDIES NOT EXCLUSIVE.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable Federal, state or local law and it is within the discretion of the Code Enforcement Board to seek cumulative remedies.

§ 53.56 ENFORCEMENT AND PENALTIES.

Any of the following enforcement remedies and penalties, to be applied independently or in a sequence as deemed necessary, shall be available to the City in response to violations of this chapter.

(A) *Notice of violation/Citation.* Enforcement proceedings for this subchapter shall be initiated by the issuance of a notice of violation (NOV) by the Code Enforcement Board.

1. Any violation of a provision contained in this Chapter 53 is hereby classified as a civil offense, pursuant to KRS 65.8808 and §§ 34.40 thru 34.77 of this Code of Ordinances; and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with these provisions, and nothing contained herein shall prohibit the enforcement of these provisions by any other means authorized by law.
2. Civil Fines for violations of this Chapter 53 shall be as set forth in §§ 34.51 and 34.74 of this Code of Ordinances and amendments thereto.
3. Each abovementioned provision of this Chapter 53 violated shall be considered a separate fineable offense. If two (2) or more provisions of this Chapter 53 are violated, the fines shall be cumulative and may be enforced under the same Citation. Each day a violation exists shall be considered a separate offense without issuance of a separate Citation.

(B) The City may also obtain injunctions or abatement orders to insure compliance with this chapter or pursue administrative remedies.

(C) *Legal Proceedings, Notification of Kentucky Division of Water.* The Code Enforcement Board may pursue appropriate legal proceedings for the enforcement of this chapter, and the City shall be entitled to recover its costs expended and reasonable attorney's fees in such proceedings. If the person, property, or facility has or is required to have a stormwater discharge permit from KDOW, the City shall notify the appropriate state authorities of the violation.

(D) *Revocation of permit, improvement or development plans.* Permits, improvement plans or development plan approvals may be revoked for any substantial departure from the approved plans thereby resulting in an illicit discharge as defined herein.

(E) *Stop work orders.* For violations involving active construction sites, the Code Enforcement Board may issue a stop work order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge.

(F) *Suspension of MS4 access due to illicit discharges in emergency situations.* The City may, without prior notice, suspend MS4 discharge access when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and

substantial danger to the environment, to the health or welfare of persons, to the MS4, or to waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4, or waters of the United States, or to minimize danger to persons.

(G) Suspension of MS4 access due to the detection of illicit discharge. Any entity discharging to the MS4 or any conveyance in violation of this chapter may have its MS4 access terminated in such termination would abate or reduce an illicit discharge. The City shall require the violator to disconnect access to the MS4 at their cost or take corrective action to eliminate the source of the illicit discharge. Reinstatement of MS4 access to premises terminated pursuant to this chapter without the prior approval of the City constitutes a violation.

(H) Cost of abatement of a violation. Any person causing a violation of this chapter which requires the City to expend public funds for the response to the violation, its abatement or the cleanup or removal of any prohibited discharges, pollutants or hazardous materials shall be liable to the City for all recoverable fees and costs incurred by the City for such response, cleanup and removal. This shall include but not be limited to personnel costs of any City departments, or designated contractor costs, replacement costs of supplies and equipment contaminated as a result of the discharge, proper disposal of contaminated materials, cleanup, evacuation and administrative and other expenses, including legal expenses, incurred in recovering such costs. Any such illegal discharges shall be considered a public health hazard and the City shall have a lien against the property for its recoverable costs if these costs are not paid within 90 days of invoice.

SECTION TWO

This Ordinance shall take effect and shall be in full force upon its enactment and publication as required by law.

SECTION THREE

All ordinances or parts of any ordinances in conflict herewith, to the extent of the conflict, if any, are hereby repealed.

SECTION FOUR

If any sentence, clause, section or part of this ordinance or the application thereof to any particular situation is, for any reason, found to be unconstitutional, illegal or invalid, the invalidity of any provision of this Ordinance shall not affect the validity of any other provisions hereof, and such other provisions shall remain in full force and effect as long as they remain valid in the absence of that provision determined to be invalid.

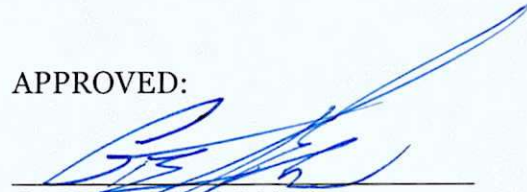
SECTION FIVE

This ordinance may be read and published in summary form.

PASSED AND APPROVED ON FIRST READING BY 6 OF 6 MEMBERS OF CITY COUNCIL ON THE 12TH DAY OF FEBRUARY, 2019.

PASSED AND APPROVED ON SECOND READING BY 6 OF 6 MEMBERS OF CITY COUNCIL ON THE 12TH DAY OF MARCH, 2019.

APPROVED:


A handwritten signature in blue ink, appearing to read 'Gabe Brown', is written over a horizontal line.

GABE BROWN, MAYOR

ATTEST:


A handwritten signature in blue ink, appearing to read 'Sharon Stevenson', is written over a horizontal line.

SHARON L. STEVENSON, CITY CLERK/FINANCE

DATE OF PUBLICATION: MARCH 21, 2019