

Chapter 28.03

REGULATIONS FOR POST CONSTRUCTION STORMWATER MANAGEMENT

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28.03.010 Purpose and Findings.

The purpose of this chapter is to provide requirements and criteria to prevent and manage stormwater pollution and to diminish adverse impacts to health, safety, property, and the general welfare of the citizens of the City of Lincoln through regulating stormwater runoff from areas of development and redevelopment to the maximum extent practicable as required by the Federal Clean Water Act, 33.U.S.C. § 1251 et seq. (as amended to date), the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (as amended to date) and the rules and regulations promulgated under such Acts.

This chapter will also promote the public welfare by guiding and regulating the design, construction, and maintenance of areas of development and redevelopment. (Ord. 19990 §1; February 3, 2014).

28.03.020 Authority and Applicability.

(a) The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the City.

(b) The regulations set forth herein or set forth elsewhere in the Lincoln Municipal Code when referred to in this chapter shall be known as the Regulations for Post Construction Stormwater Management.

(c) The regulations shall apply to all developments and redevelopments within the corporate limits of the City and within the three mile jurisdictional boundary of the City.

(d) As provided in the Interlocal Agreement dated March 29, 1996, as amended to date, the City of Lincoln and the Lower Platte South Natural Resources District will cooperate in the administration and enforcement of these regulations.(Ord. 19990 §2; February 3, 2014).

28.03.030 Definitions.

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

70th Percentile Rain Event shall mean a rainfall storm event equivalent to a depth of rainfall which is not exceeded in 70 percent of the historic runoff producing rainfall storm events. The depth of rainfall to be used shall be that which is identified in the Drainage Criteria Manual. The depth of rainfall is used in hydrologic calculations to determine the volume of water to be detained.

80th Percentile Rain Event shall mean a rainfall storm event equivalent to a depth of rainfall which is not exceeded in 80 percent of the historic runoff producing rainfall storm events. The depth of rainfall to be used shall be that which is identified in the Drainage Criteria Manual. The depth of rainfall is used in hydrologic calculations to determine the volume of water to be detained.

Best Management Practices (BMPs) shall mean water quality and quantity management practices (including schedules of activities, prohibitions of practices, maintenance procedures) and other management practices that are identified or referenced in the City's Design Standards, Drainage Criteria Manual, City's NPDES MS4 Permit, or are otherwise approved by the Director.

BMP Inspection Fee shall mean a fee charged for inspection of a Structural BMP by the City due to a failure of the BMP owner to do a required annual owner inspection. These BMP inspections are meant to ensure that the BMPs are functioning as intended and are being properly maintained.

City shall mean the City of Lincoln, Nebraska.

City Inspection shall mean an inspection by the City of a Structural BMP on an annual basis until the BMP is established and thereafter on a periodic basis. City inspections will be made to ensure that the BMPs are functioning as intended and are being properly maintained.

Common Plan of Development or Sale shall mean a contiguous area such as a subdivision where multiple separate and distinct development activities may be taking place at different times, on different schedules, but are covered under one common development plan that covers one acre or more in total land area.

Construction Activity shall mean any construction, as well as any reconstruction of impervious surfaces (e.g. impervious pavement, buildings, other structures, etc), of one acre or more of total land area. Construction activity does not include routine maintenance such as that performed to maintain the original line and grade, hydraulic capacity, or the agricultural use of the land.

Director shall mean the Director of Public Works and Utilities of the City, or an authorized deputy, agent, or representative.

Drainage Criteria Manual shall mean the City of Lincoln Drainage Criteria Manual as amended.

Land Development Project shall mean any project with one acre or greater of construction activity on newly developed land.

Land Redevelopment Project shall mean any project with one acre or greater of construction activity on a site that was previously developed. The determination of the one acre or more shall be based only on the construction activity of the land redevelopment project that is having impervious area added or for areas being disturbed.

Maintenance Agreement shall mean a recorded document that describes the procedures for access, owner inspections, corrections, and maintenance, and how Structural BMPs will be maintained.

MS4 Permit shall mean the permit issued to the City by the Nebraska Department of Environmental Quality for the purpose of municipal compliance with the provisions of the National Pollutant Discharge Elimination System (NPDES) Program.

Municipal Separate Stormwater Sewer System (MS4) shall mean the storm drainage system owned or operated by the City.

National Pollutant Discharge Elimination System (NPDES) shall mean the program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Federal Clean Water Act (Sections 301, 402, 318, and 405), CFR Title 33, Sections 1317, 1328, 1342, and 1345; the Nebraska Environmental Protection Act (Neb. Rev. Stat. § 81-1501 et seq.); and Nebraska Administrative Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System.

Non-Structural Best Management Practice shall mean any Best Management Practice that is a program and not a permanent structure (e.g. use of no phosphorus fertilizer, recycling practices, soil amendments, soil ripping, etc).

Notice of Violation shall mean a notice sent by the City that the Structural BMP is in violation of this chapter's requirements and that the owner is subject to a penalty.

Owner shall mean the named property owner(s) as indicated by the records of the Register of Deeds of Lancaster County, Nebraska.

Owner Inspection shall mean an inspection of the BMPs annually by a qualified individual on behalf of the owner to ensure that BMPs are functioning as intended and are properly maintained.

Pollutant shall mean any substance or material which contaminates or impedes the flow of water including, but not limited to dredged spoil, spoil waste, incinerator residue, filter backwash, domestic or industrial wastewater, septic waste, sewage, garbage, refuse, junk, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, yard waste, industrial or household hazardous waste, hazardous substance, pesticide, fertilizer, animal waste, concrete truck washout, used oil, antifreeze, litter, and industrial, municipal, or agricultural waste.

Post Construction Stormwater Management Plan shall mean a plan of the land development project or land redevelopment project that includes location of Structural BMPs, the owner, the design of the Structural BMPs, the schedule for installation, the schedules and procedures for owner inspections and maintenance, and who is responsible for maintenance (information that will be included in a recorded maintenance agreement required prior to any building permit approval). It will include a description of Non Structural Best Management Practices, as applicable.

Qualified Individual shall mean any person who is knowledgeable in the principles and practices of post construction stormwater control and possesses the skill to assess conditions on the property that could impact stormwater quality and to assess the effectiveness of BMPs installed to control stormwater discharges.

Retro-fitted Structural Best Management Practice shall mean a Structural BMP that was originally intended to manage water quantity concerns and has been retro-fitted to manage water quality

Stormwater shall mean precipitation runoff, snow melt runoff and other surface water runoff.

Structural Best Management Practice shall mean any BMP that is intended to be a permanent structure for managing water quality and quantity.

Watershed shall mean the areas within the corporate and extra territorial jurisdictions of the City draining to the following creeks: Little Salt Creek, Stevens Creek, Deadmans Run, Antelope Creek, Beal Slough, Southeast Upper Salt Creek, Cardwell Branch, Haines Branch, Middle Creek, Oak Creek, South Salt Creek (Salt Creek south of confluence with Oak Creek excluding above named creeks) and North Salt Creek (Salt Creek north of confluence with Oak Creek excluding above named creeks, but does include Lynn Creek). (Ord. 19990 §3; February 3, 2014).

28.03.040 Requirement.

Within the City's corporate and three mile jurisdictional boundary, all land development projects and land redevelopment projects with one acre or more of construction activity must include provisions for the management of the post construction runoff in a Post Construction Stormwater Management Plan. (Ord. 19990 §4; February 3, 2014).

28.03.050 Post Construction Stormwater Management Procedures.

(a) The Post Construction Stormwater Management Plan as applicable shall be submitted to the Planning Department for transmittal to the Director for review and approval, as part of any preliminary plat for a land development project or land redevelopment project with one acre or more of construction activity.

(b) A Post Construction Stormwater Management Plan as applicable shall be submitted to the Building and Safety Department for transmittal to the Director for review and approval as part of any building permit application for a land development project or land redevelopment project with one acre or more of construction activity, unless a Post Construction Stormwater Management Plan was required and submitted previously to the Planning Department. (Ord. 19990 §5; February 3, 2014).

28.03.060 Post Construction Stormwater Management Plan.

(a) For land development projects, the Post Construction Stormwater Management Plan shall include, at a minimum, provisions for Structural BMPs to detain the 80th percentile rainfall event measured at every discharge point from the land development project.

(b) For land redevelopment projects, the Post Construction Stormwater Management Plan shall include, at a minimum, provisions for Structural BMPs to detain the 70th percentile rainfall event measured at every discharge point from the land redevelopment project.

(c) Provisions for Structural BMPs are set forth in the Drainage Criteria Manual, although other BMPs and other means and methods other than those set forth in the Drainage Criteria Manual may be used by an applicant, subject to Director approval on a case by case basis.

(d) Information related to the Post Construction Stormwater Management Plan shall be submitted using a Water Quality Control Volume Form per the Drainage Criteria Manual. (Ord. 19990 §6; February 3, 2014).

28.03.070 Waivers.

(a) A single family dwelling, two family dwelling, duplex, triplex or quadraplex, provided the above units are not part of a larger common plan of development or sale, are exempt from the requirements of this chapter.

(b) Land development projects with approved preliminary plats and land redevelopment projects with approved building permits prior to February 1, 2016 are exempt from the requirements of this chapter.

(c) The Director may grant partial or complete waivers from the requirements of this chapter based on:

(1) Unplanned emergency work or repairs necessary to health, safety, and general welfare of the public;

(2) Credits for Retro-fitted Structural BMPs on properties within the same watershed;

(3) Previously constructed private or public Structural BMP(s) within the same watershed that were constructed to be above the post construction management requirements and for which the Director has approved credits above and beyond the post construction management requirements;

(4) Circumstances where the project cost of implementing the proposed requirements would be so disproportionate that completing the project would not be practical, as determined by the Director.

(d) Land development or redevelopment projects with no construction activity are exempt from the requirements of this chapter. (Ord. 19990 §7; February 3, 2014).

28.03.080 Maintenance.

(a) The owner of property on which a Structural BMP has been installed shall be responsible for maintenance, owner inspections, and for submitting a written record of owner inspection results and any maintenance work annually to the Director.

(b) Structural BMPs shall have an annual owner inspection by a qualified individual with an inspection report submitted to the Director at least annually.

(c) Prior to any building permits being issued the owner shall execute and record a maintenance agreement and easement with the Register of Deeds prior to any building permits being issued that shall be binding on all subsequent owners of the subject property served by the Structural BMP. Such maintenance agreement shall include schedules and procedures for owner inspection and maintenance, annual submittal date of annual owner inspection results to the Director, and who is responsible for maintenance.

(d) The owner shall provide access to the property, at reasonable times, for City inspections by the Director to ensure that the Structural BMP is maintained in proper working condition to meet design standards under the Drainage Criteria Manual.

(e) Failure to submit annual owner inspection results to the Director may result in a City BMP inspection fee of \$150 that shall be assessed against the property owner. Fees shall be due upon receipt by the property owner of an invoice from the City for any City inspections. Fees shall be made payable to Public Works - Watershed Management Division for deposit into the General Fund for Watershed Management. Any person who fails to pay such fee within 30 days of receipt shall be subject to a late fee, in addition to an enforcement action for violation of this chapter. A City inspection will be counted as an annual inspection.

(f) Maintenance information is provided in the Drainage Criteria Manual including an example maintenance plan and example annual owner inspection sheets specific to the BMPs listed in the Drainage Criteria Manual.

(g) Owner responsibilities for owner inspections and maintenance may be partially or wholly turned over to the City on a year to year or permanent basis, upon approval of the Director,

through a maintenance permit process. A draft maintenance permit is provided in the Drainage Criteria Manual along with estimated costs to be paid by owner. (Ord. 19990 §8; February 3, 2014).

28.03.090 Replacement.

(a) If a Structural BMP is no longer effective and it needs to be replaced, the City will replace it upon written request by the owner at the sole discretion of the City if:

(1) The owner(s) can demonstrate that it has been inspected and maintained annually, and can show the annually submitted owner inspection reports;

(2) Any previous periodic City inspection reports indicate that it has been maintained properly and that any corrections noted in City inspection reports have been corrected to the City's satisfaction;

(3) The Structural BMP was designed and installed properly;

(4) The City has available funding for replacement; and

(5) There is an approved Post Construction Stormwater Management Plan.

(b) The owner is responsible for owner inspections and maintenance of any City replaced Structural BMPs. (Ord. 19990 §9; February 3, 2014).

28.03.100 Credits.

(a) Credits may be obtained on a volume (acre feet) basis for treatment of development and/or redevelopment projects above and beyond the post construction stormwater management requirements.

(b) Credits may be obtained for Retro-fitted Structural BMPs.

(c) Approved credits belong to the person named on the Water Quality Control Volume Form (see Drainage Criteria Manual). Such credits can be transferred, traded or sold by the original credit holder. Any transfers regarding the credit holder need to be documented by revising and resubmitting the Water Quality Control Volume Form for approval. The resubmitted Water Quality Control Form must include an original signature from the original credit holder.

(d) Approved credits may be used, upon approval by the Director, on a volume basis to wholly or partially offset Post Construction Stormwater Requirements for a different development or redevelopment project than that for which they were obtained; however the credits must be used within the same watershed from which they were obtained. (Ord. 19990 §10; February 3, 2014).

28.03.110 Right of Entry.

The City and the Lower Platte South Natural Resources District may perform City inspections of the property to verify compliance with this chapter and are authorized to enter the property at reasonable times to inspect. If Structural BMPs are deemed by the Director to be ineffective or maintained improperly, the Director may take enforcement action as described within this chapter. Whenever the Director has cause to believe there exists, or potentially exists in or upon the property, any condition which constitutes a violation of this chapter, the Director is authorized to enter the property at reasonable times to perform the duties imposed by this chapter. If entry is refused, the Director shall have recourse to the remedies provided by law to secure entry. (Ord. 19990 §11; February 3, 2014).

28.03.120 Unlawful Acts.

It shall be unlawful for any person to:

- (a) Not maintain the Structural BMPs per the maintenance agreement;
- (b) Not correct violations noted by the City;
- (c) Prevent or obstruct the Director from entering the property with a Structural BMP per this chapter;
- (d) Not construct BMPs per the direction of this chapter;
- (e) Discharge pollutants or effluents not permitted by the NPDES permit;
- (f) Falsify records; or
- (g) Violate any provision of this chapter. (Ord. 19990 §12; February 3, 2014).

28.03.130 Notice of Violation.

(a) Whenever the Director finds that any owner has violated or is violating this chapter or any prohibition, limitation or requirement contained herein, such owner shall be notified in writing.

(b) Upon notice by the Director the owner shall correct the violation.

(c) If satisfactory corrections are not made by the owner within a reasonable period of time or thirty (30) days if not specifically provided in the Notice of Violation, the Director may perform all necessary work to place the facility in proper working condition.

(d) If satisfactory corrections are not made by the owner within a reasonable period of time or thirty (30) days if not specifically provided in the Notice of Violation, the owner of the Structural BMP may be assessed the cost of the work and/or any lawful penalties.

(e) Structural BMP owners are subject to a Notice of Violation if the Structural BMP is not owner inspected, not owner maintained or if owner does not send a written record of owner inspections results annually.

(f) A BMP inspection fee of \$150.00 may be assessed to an owner for a Structural BMP which is not owner inspected, owner maintained or where the owner has not submitted a written record of owner inspection results. (Ord. 19990 §13; February 3, 2014).

28.03.140 Penalties.

(a) Any owner who receives a Notice of Violation from the City who fails to correct the violation within the time provided, or in thirty days (if a shorter term is not specifically provided), and has violated or is violating this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in the sum of not less than \$100.00 and not more than \$500.00 per day and per violation. In the case of a continuing violation, each day shall constitute a separate offense.

(b) If the City determines that the conditions described above constitute an immediate nuisance and hazard to public safety, the City shall issue a written notice to abate and remove such nuisance or hazard within twenty-four hours. If such person responsible shall have failed or refused to abate and remove such nuisance at the expiration of twenty-four hours from delivery of notice, the City may remove such nuisance and the expense of such removal shall be recoverable in an action at law against the person responsible. (Ord. 19990 §14; February 3, 2014).

28.03.150 Appeals.

Any owner issued a Notice of Violation by the Director under the provisions of this chapter may within ten (10) days of the mailing of the written Notice of Violation appeal to the Director for a hearing. The Director will notify the appellant in writing of the date, time, and place of hearing before the Director, which date shall be no later than ten (10) days from the filing of the appeal. The appeal hearing will not be conducted according the Nebraska Rules of Evidence, but the appellant will have the right to:

- (a) Call, examine, and take sworn testimony of witnesses on any matter relevant to the issues of the hearing;
 - (b) Introduce documentary and physical evidence;
 - (c) Cross examine opposing witnesses on any matter relevant to the issues of the hearing;
- and
- (d) Rebut opposing evidence.

The Director will review all information provided by the appellant. After the appeal hearing, the Director will make written findings of fact, and based upon such findings, will sustain, modify or rescind the original order. A written report of the Director's decision will be furnished to the appellant within ten days from the date that the appeal hearing is closed. The decision of the Director will be final and binding upon both the City and the appellant, and may be appealed as provided by state law. However, such decision will not be stayed unless so ordered by the district court. (Ord. 19990 §15; February 3, 2014).

28.03.160 Severability.

Each section or subsection of this chapter is hereby declared to be independent of every other section or subsection of this chapter; and invalidity of any section or subsection of this chapter shall not invalidate any other section or subsection hereof. (Ord. 19990 §16; February 3, 2014).